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## REGION 2 NEWS

Newark's Lead Contamination Prompts State And Federal Commitments (WATER ONLINE; September 17, 2019)

A recent lead contamination crisis affecting the drinking water supply in New Jersey has garnered the attention of state lawmakers. And now even some of the country's highest authorities have pledged to address it.

WILL TRUMP'S CLEAN-WATER ROLLBACK IMPERIL NJ'S SMALL STREAMS, WETLANDS? (NJ SPOTLIGHT; September 17, 2019)

The Trump administration's rollback last week of a key provision of the Clean Water Act isn't much of a surprise, but how much it will impact water quality in New Jersey is still a matter of debate.

Why Dutchess is warning of bats as air conditioners are removed (POUGHKEEPSIE JOURNAL; September 17, 2019)

Don't let your house become a bat cave.

Tropical wave's odds increase to 90% of development as it moves toward V.I. (VIRGIN ISLANDS DAILY NEWS; September 17, 2019)

September is proving why it's considered peak hurricane season as another tropical wave with very high chances of developing into a tropical depression moves in the direction of the Virgin Islands, according to the National Hurricane Center's 8 p.m. update.

DOH says territory 'not at risk' for deadly mosquito virus (VIRGIN ISLANDS DAILY NEWS; September 17, 2019)

The V.I. Health Department says Virgin Islanders are not at risk for Eastern Equine Encephalitis, the rare mosquito-borne illness that has already claimed two lives this season and left several others ill or incapacitated on the mainland.

New Jersey's largest solar farm could be built on Toms River Superfund site (ASBURY PARK NEWS; September 16, 2019)

The former Ciba-Geigy Superfund site could soon be home to a massive solar farm that could generate up to 35 megawatts of electricity.

City trying to hose homeowners with new water bill database: suit (NEW YORK POST; September 16, 2019)

The city is trying to hose homeowners by changing the water usage database — making it more difficult to challenge overcharges, according to landlords who are suing to stop the modification.

Mosquito sprays scheduled for Brigantine and Northfield (PRESS OF ATLANTIC CITY; September 16, 2019)

The Atlantic County Office of Mosquito Control is scheduled to perform two ground sprays for portions of Brigantine and Northfield this week.

Landowners, DEC, Sierra Club fight back in National Fuel pipeline case (BUFFALO NEWS; September 16, 2019)

As National Fuel and the state Department of Environmental Conservation continue their legal battles over a pipeline that would carry natural gas from Pennsylvania through Western New York, residents in the affected areas still are playing a role in opposing the project.

Serino presents Lyme disease awareness information (MID-HUDSON NEWS; September 16, 2019)

State Senator Susan Serino (R, Hyde Park) hosted an event at the Poughkeepsie Galleria mall on Sunday designed to educate children and families on Lyme disease and other tick-borne illnesses.

[Illegal dumping ringleader: 'I apologize to the people of Suffolk County.'](#) (NEWSDAY, September 16, 2019)

The man Suffolk prosecutors say was the ringleader of an illegal dumping operation apologized for his actions Monday, claiming he was unaware the scheme had left contaminated landfill at homes and businesses across Long Island.

[U.S. Navy says in letter to state that it opposes cleanup plan for Bethpage plume](#) (NEWSDAY; September 16, 2019)

The U.S. Navy is opposing the state's \$585 million proposal to fully clean up and contain groundwater pollution coming from the former Northrop Grumman and Navy-owned facilities in Bethpage and accused the state of not basing its plan on science.

[Lead pipes that tainted Newark's water are found across US](#) (ABC NEWS; September 13, 2019)

A drinking water crisis in New Jersey's biggest city is bringing new attention to an old problem: Millions of homes across the U.S. get their water through pipes made of toxic lead, which can leach out and poison children if the water isn't treated with the right mix of chemicals.

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## REGION 2

### WATER ONLINE

[Newark's Lead Contamination Prompts State And Federal Commitments](#)

By Peter Chawaga

September 17, 2019

A recent lead contamination crisis affecting the drinking water supply in New Jersey has garnered the attention of state lawmakers. And now even some of the country's highest authorities have pledged to address it.

[Last month](#), the U.S. EPA sent a letter to officials in Newark, NJ, indicating that its efforts to mitigate ongoing lead contamination in residents' drinking water were not working — prompting the city to provide bottled water as it worked toward a more permanent fix. This has led New Jersey's legislators to examine how the problem, caused by outdated drinking water infrastructure that leeches lead into the supply as it is carried from treatment plants to homes, might be impacting the state at large.

"A state panel gathered ... to investigate if New Jersey's water quality law should be strengthened," according to [News 12](#). "[The] Community and Urban Affairs Committee heard about the oversight of the 287 public water systems statewide in a meeting... The committee says that it will suggest adjustments to the 2017 law. Officials say that with an estimated 300,000 lead service lines statewide, a lot is at stake."

Lead contamination in drinking water has been traced to acute health effects for consumers, including adversity to brain development in children. A [2015 lead contamination crisis](#) in Flint, MI, brought the issue to the forefront of the public's attention.

So it may be no surprise that, in addition to the New Jersey regulators, President Trump's administration appears poised to intervene in Newark.

"I will commit to doing anything that we possibly can do to alleviate the problem there, and if that involves a specific person or a dozen specific people, we will do what is necessary," Housing and Urban Development (HUD) Secretary Ben Carson said when asked if HUD would assign a liaison to work with Newark as it did with Flint, according to [NJ.com](#).

This followed U.S. Senate legislation that was passed to help Newark deal with the problem.

"The Senate ... passed legislation sponsored by [U.S. Sen. Robert] Menendez and U.S. Sen. Cory Booker, D-N.J., to let the state transfer up to \$100 million from their federal clean water fund to help replace the lead pipes that have contaminated Newark's drinking water," per [NJ.com](#). "Those funds can be used to help fund the city's \$132 million project to replace the water lines."

To read more about how drinking water utilities maintain buried infrastructure, visit Water Online's [Asset Management Solutions Center](#).

## NJ SPOTLIGHT

### WILL TRUMP'S CLEAN-WATER ROLLBACK IMPERIL NJ'S SMALL STREAMS, WETLANDS?

**Experts are divided, but one possible outcome could make New Jersey more vulnerable to water pollution from other states**

By Tom Johnson

September 17, 2019

The Trump administration's rollback last week of a key provision of the Clean Water Act isn't much of a surprise, but how much it will impact water quality in New Jersey is still a matter of debate.

The Trump administration's rollback last week of a key provision of the Clean Water Act isn't much of a surprise, but how much it will impact water quality in New Jersey is still a matter of debate.

In finalizing a repeal Thursday of an Obama-era rule to protect small streams and wetlands, the U.S. Environmental Protection Agency and U.S. Army Corps of Engineers argued it would end regulatory uncertainty about what waters are covered by the federal law.

But here in New Jersey, the state has authority over both federal programs governing water quality and wetlands, imposing, in most cases, more stringent protections than afforded by the feds.

#### **How much will it hurt?**

"It won't affect us in any significant way," said Dennis Toft, an environmental attorney with Chiesa Shahinian and Giantomasi, explaining the state's jurisdiction over federal programs contributes, in part, to lessening the impact of the repeal.

Unlike other states and the federal government, New Jersey also regulates transition areas near wetlands and riparian lands, Toft said. "It recognizes the fact that we are more developed and need buffer areas around waterways and need to protect those streams."

The so-called Waters of the United States rule has been a flashpoint of controversy for years, since it extended protections to small streams, wetlands and intermittent waterways in what critics called a classic case of regulatory overreach.

But advocates said the rule sought to protect tributaries, wetlands and intermittent waterways that shield downstream waters, a particular concern among states where pollution from neighbors with less stringent regulations could degrade water quality.

"It allows for more flooding and pollution," said Jeff Tittel, director of the New Jersey Sierra Club. "It could have a big impact on places like the Delaware River," he said. It is an argument state officials have made in the past when opposing the proposed rollback, he added.

#### **Neighboring pollution could take toll**

This spring, New Jersey joined 13 other states and the District of Columbia in opposing the repeal. Rolling back federal protections over wetlands in other states could have a devastating effect even with strong safeguards in place in New Jersey.

"There's literally thousands of miles of intermittent streams across New Jersey that could be affected by this," said Doug O'Malley, director of Environment New Jersey. "Just because you can't put a boat in the water doesn't mean it does not need protection."

More than half of all stream-miles in the Delaware River Watershed could be left without federal protections, according to an analysis by Environment America, the parent of Environment New Jersey. More than six million people in the basin obtain their drinking water from streams that rely on intermittent or headwater areas, according to the group.

EPA Administrator Andrew Wheeler, however, said the repeal of the old rule and adoption of a new definition of the regulation will provide greater regulatory certainty for farmers, landowners, home builders and other developers nationwide.

In any event, the rule is likely to trigger more litigation, including from New Jersey and other states that have often challenged rollbacks of environmental rule by the Trump administration and environmental groups.

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## NEW YORK POST

### [City trying to hose homeowners with new water bill database: suit](#)

By Rich Calder and Julia Marsh

September 16, 2019

The city is trying to hose homeowners by changing the water usage database — making it more difficult to challenge overcharges, according to landlords who are suing to stop the modification.

The city's Department of Environmental Protection quietly made plans over the summer to switch the online public portal that tracks a property's water consumption so that it only provides a one-year overview instead of a decade-long breakdown.

New York Water Management — an industry group representing thousands of property owners — sued earlier this month and won a temporary reprieve from the change that was supposed to happen on Sept. 13.

"The limitation on access to information will reduce challenges to overcharges and applications for credits thereby allowing NYC to collect more revenue," the group says in the suit.

"It makes one wonder if the abandonment of the Department of Finance portal for the deficient MYDEP Portal is just a ruse to allow the City to collect millions of dollars to which it is not entitled," it argues.

DEP Commissioner Vincent Sapienza said in a Sept. 9 letter to two City Council members that the new system is the result of a "major technological platform upgrade." Sapienza added that he'd modified the system to allow people to search for five years of billing history in response to concerns by the real estate industry.

But opponents say that accommodation doesn't go far enough.

"What happened to open, transparent government?" asked attorney Domenic Recchia Jr., a former city councilman who is representing the landlords.

"If Mike Bloomberg ever did this and Bill de Blasio was the public advocate, he would be screaming and rallying up everyone to say we have to go after the mayor. And now he's the mayor."

The current councilman, Justin Brannan (D-Brooklyn), said "residents should continue to have full access to their water bill records so we can be as open and transparent as possible."

"I intend on introducing legislation if the city does not right this wrong," Brannan said.

A city Law Department spokesman said, "This lawsuit has no merit and we'll defend the agency's decision in court."

The parties are due in Brooklyn Supreme Court Wednesday.

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## POUGHKEEPSIE JOURNAL

### Why Dutchess is warning of bats as air conditioners are removed

By AJ Martelli

September 17, 2019

Don't let your house become a bat cave.

The Dutchess County Department of Behavioral and Community Health is urging residents to be careful when removing their air-conditioning units, as the presence of bats increases around this time of the year, according to a release from the county.

Through Thursday, the department had received 86 reports of possible exposures of people to or pets to bats this year, the release said. Bats can potentially carry and transmit rabies and other diseases, and can enter homes by squeezing through gaps as small as a half-inch. When windows are opened to install or remove air conditioners, it creates gaps between the window sashes.

A.K. Vaidian, commissioner of the department, said if a bat comes in contact with a human or pet, it must be captured and sent to a lab for testing.

"This includes situations where a bat is found in a room with a sleeping person, unattended child, intoxicated or mentally compromised person," Vaidian said in the release. "Don't release the bat unless you can be sure there was no contact between the bat and any people or domestic animals and have consulted with DBCH."

The department offered the following tips to prevent pests from getting inside:

- Check to make sure the upper window sash stays in place and brace it up if needed.
- Be sure open windows have tight-fitting and intact screens.
- Ensure entry doors have a self-closing screen door.
- When placing a fan in a window, be sure the screen remains in place.
- Keep garage doors and other doors closed when not in use.
- Make sure chimney dampers are closed and seal all unused openings from the house into the chimney.
- Be sure access points to non-habitable spaces like attics, basements and crawlspaces are kept closed with tight-fitting doors.

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## VIRGIN ISLANDS DAILY NEWS

### Tropical wave's odds increase to 90% of development as it moves toward V.I.

By Joe Mario Pedesen

September 17, 2019

September is proving why it's considered peak hurricane season as another tropical wave with very high chances of developing into a tropical depression moves in the direction of the Virgin Islands, according to the National Hurricane Center's 8 p.m. update.

A low pressure system located over the central tropical Atlantic has become more organized as it slowly moves west where environmental conditions for tropical storm development are ideal.

The system has a 70% chance of becoming a tropical depression in the next 48 hours, and a 90% chance of doing so over the next five days, the National Hurricane Center said. It could eventually become Tropical Storm Imelda.

Most early predictions call for the system to pass north of the Virgin Islands and as it heads into the open Atlantic. However, at least two outlying computer models call for the storm to move south of the general consensus area and pass over the Virgin Islands.

A tropical depression forms when a low pressure area is accompanied by thunderstorms and produces winds below 39 mph. If and when the system gains more structure and maximum sustaining winds over 39 mph it will become a tropical storm.

A second system in the Gulf of Mexico has lost steam and structure, according to the center. Little development is expected before it moves inland along the northwestern Gulf coast Monday night or this morning.

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## VIRGIN ISLANDS DAILY NEWS

### [DOH says territory 'not at risk' for deadly mosquito virus](#)

By Daily News Staff

September 17, 2019)

The V.I. Health Department says Virgin Islanders are not at risk for Eastern Equine Encephalitis, the rare mosquito-borne illness that has already claimed two lives this season and left several others ill or incapacitated on the mainland.

In a statement Monday, Dr. Brett Ellis, director of the Territorial Public Health Laboratory, said the mosquito that maintains "Triple E" in the natural environment has never been found in the territory.

"The primary disease vector for the territory is the *Aedes aegypti* mosquito, which does not spread Triple E," Ellis said, in the statement.

A vector is an animal that has the ability to spread diseases.

In the territory, the Health Department's Vector Control Program is currently monitoring *Aedes aegypti*, the mosquito responsible for spreading dengue, Zika and chikungunya. Officials are expanding these efforts to learn more about the mosquito and figure out the most effective ways to control it, according to the statement.

For this reason, residents may see more vector control personnel setting mosquito traps and performing other control activities throughout the territory.

Health officials say there are currently no dengue, Zika or chikungunya cases in the territory, with the last Zika case occurring in January 2018.

In the U.S., an average of seven human cases of Triple E are reported annually, according to the U.S. Centers for Disease Control and Prevention.

About a third of all people with Triple E die from the disease. Death usually occurs two to 10 days after onset of symptoms, but can occur much later, according to the CDC.

Of those who recover, many are left with minor to severe mental and physical impairments.

Most cases of Triple E have been reported from Florida, Massachusetts, New York and North Carolina. Transmission is most common in and around freshwater hardwood swamps in the Atlantic and Gulf Coast states and the Great Lakes region.

Infection is characterized by chills, fever, malaise, arthralgia and myalgia. The illness lasts one to two weeks, and recovery is complete when there is no central nervous system involvement.

V.I. Health officials encourage residents to always wear mosquito repellent, loose-fitting and light-colored clothing, and to keep screens on windows and doors in good repair to protect themselves from mosquito bites.

More information can be found on the CDC website at [www.cdc.gov](http://www.cdc.gov).

Individuals with questions or concerns about mosquito-borne diseases or the V.I. Health Department's Vector Control Program can call 340-690-9177 or email [dohvectorcontrol@usvi.onmicrosoft.com](mailto:dohvectorcontrol@usvi.onmicrosoft.com).

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## ASBURY PARK NEWS

### New Jersey's largest solar farm could be built on Toms River Superfund site

By Jean Mikle

September 16, 2019

The former [Ciba-Geigy Superfund site](#) could soon be home to a massive solar farm that could generate up to 35 megawatts of electricity.

Toms River Merchant Solar LLC plans to lease about 166 acres of property at the Superfund site from BASF — which purchased the land from Ciba in 2009 — and install solar panels on the land.

The project would be the largest solar field in New Jersey, according to the state Board of Public Utilities.

The Washington, D.C.-based [Solar Energy Industry Association](#) says 1 megawatt of solar-generated electricity is enough to power an average of about 190 homes.

Toms River Merchant Solar is expected to present the solar farm proposal to the township's Planning Board on Sept. 18. The planning board meeting starts at 6 p.m., and is held in the L. Manual Hirshblond Meeting Room on the second floor of town hall, 33 Washington St.

Ground-mounted solar panels would be installed in the areas of the 1,200-acre site that were used for Ciba's industrial dye-making operations. The massive Ciba site is located off Route 37, near the Garden State Parkway, with its main entrance now on Oak Ridge Parkway.



An aerial view of the Ciba-Geigy Superfund site in Toms River in 2003. (Photo: FILE PHOTO)

Toms River Merchant Solar is a subsidiary of [EDF Renewables](#), a renewable energy company that has developed dozens of solar projects throughout the country, including several in New Jersey. EDF's other renewable energy projects in the state include the [Bayshore Recycling Solar Project](#) in the Keasbey section of Woodbridge, and the [Matrix Solar Project](#) in Perth Amboy, developed as part of PSE&G's Solar 4 All program.



Toms River Merchant Solar is a subsidiary of EDF Renewables, a renewable energy company that has developed dozens of solar projects throughout the country, including several in New Jersey. EDF's other renewable energy projects in the state include the Bayshore Recycling Solar Project in the Keasbey section of Woodbridge, and the Matrix Solar Project in Perth Amboy, developed as part of PSE&G's Solar 4 All program.

Township Planner David G. Roberts said that because the former Ciba property is a Superfund site, the planning board has limited jurisdiction over activities there. The site is overseen by the federal Environmental Protection Agency and the state Department of Environmental Protection.

Linda L. Gillick, who chairs the Citizens Action Committee on Childhood Cancer Cluster, said while the committee has not endorsed the solar field proposal, the group feels "this is step in right direction to help the environment."

Gillick has chaired the committee since 1996, when it was formed to investigate the elevated levels of childhood cancer that plagued Toms River in the mid- to late-1990s. Gillick and other residents and activists have long expressed concern about any potential development on the Ciba site.



A 1951 Asbury Park Press story describes the construction of the chemical plant in Toms River that would become known as Ciba-Geigy. (Photo: Asbury Park Press Archives)

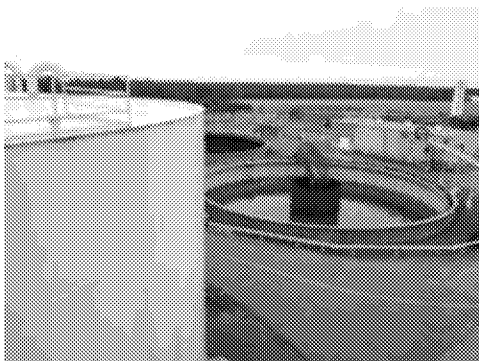
The Ciba solar project received conditional approval earlier this year from the state Board of Public Utilities. It would be built on a "brownfield" site, property that has been previously contaminated.

A similar solar farm has been operating for several years at the site of the former French's Landfill in Brick.

The BPU said Toms River Merchant Solar must meet requirements put in place by the DEP, including assurances that the solar field does not exacerbate pollution on the Ciba site and does not interfere with the ongoing groundwater clean-up there.

The Ciba property is still zoned for industrial use, and the solar field project requires no variances from township land-use codes. Roberts said installation of the solar panels will require the removal of some "isolated stands of trees" near the solar field.

The solar farm proposal for the former Ciba site says the solar panels would generate 5 megawatts of electricity for customers enrolled in New Jersey's Community Solar Energy Pilot Program, while the remaining 28 megawatts would go into the grid connected to Jersey Central Power & Light Co.'s distribution system.



The former Ciba-Geigy Corp. Superfund site in Toms River, NJ, is now owned by BASF. Currently on the site BASF runs a new groundwater treatment system. This is a view of a basin (right) that was part of the chemical removal process but is no longer in use. At left is a Final Effluent tank, (part of the new system) used to house clean water. /Russ DeSantis for the Asbury Park Press / Slug: ASB 0221 Former Ciba property (Photo: Russ DeSantis)

The EPA has been overseeing cleanup at the Ciba site since the property was placed on the federal Superfund list in 1982. Ciba is one of two Superfund sites in Toms River; the other is Reich Farm, located off Route 9 in the Pleasant Plains section of town.

More than 10 billion gallons of polluted groundwater has been extracted from the ground, treated to remove contaminants, and then recharged onto the ground in the property's northeast corner, according to EPA. Groundwater cleanup is expected to continue for at least another 20 years.

Learn more about the clean-up in the video above this story.

Ciba-Geigy, initially called Toms River Chemical Co., made millions of pounds of industrial dyes and resins on its property from 1952 until all manufacturing operations ceased in 1996.

### **Pollution history**

Once Ocean County's largest employer, the company would eventually become known as a notorious polluter.

In 1992, two former Ciba executives and the corporation pleaded guilty to illegally dumping pollutants into two landfills on the company's property, and agreed to pay fines. All industrial operations on the site ceased in December 1996, the same year a groundwater treatment operation began there.

Ciba spent more than \$300 million to treat groundwater and clean up toxic waste on its property, and spent millions more to settle three lawsuits related to toxic waste on its land and the polluted groundwater that it caused.

A 1999 state and federal study determined that some Toms River residents had been exposed to chemical pollutants from the site that had leached into private wells and the public drinking water system decades ago.

The same study determined that the site no longer posed an environmental threat because polluted wells have been sealed and groundwater treatment is in place.

Most of the buildings that housed Ciba's dye-making operations have been razed. The sprawling property — larger than the city of Hoboken — is mostly vacant, except for two to three employees who oversee the mostly automated cleanup of groundwater contamination.

Cleanup of toxic soil and the removal of thousands of waste-filled drums was finished in 2010, and BASF finished construction of a more efficient groundwater treatment system in 2013, and began operating it in 2014.

About 200 homes are located north of the property, and another 250 to the south. The West Dover Elementary School is adjacent to the site.

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Mosquito sprays scheduled for Brigantine and Northfield

By Lauren Carroll

September 16, 2019



The Atlantic County Office of Mosquito Control is scheduled to perform two ground sprays for portions of Brigantine and Northfield this week.

Between 4 a.m. and 6:30 a.m., on Monday, areas in Brigantine along north 12th Street, Shore Drive, Traverse Place, Gold Course Drive, Lafayette Boulevard, Risley Road, Bayshore Avenue, south 6th Street and Beach Avenue will be treated.

During the same time frame on Tuesday, areas in Northfield in the area bounded by New Road, Oakcrest Avenue, Leeds Avenue, Marita Ann Drive, Oak Avenue, Burroughs Avenue, Zion Road and Mill Road will be treated.

The ground spray treatment uses an ultra-low volume aerosol of Zenivex, and is used to control the adult mosquito population and reduce the spread of mosquito-borne illness.

So far this year, mosquitoes in areas of Northfield and Somers Point have tested positive for West Nile Virus.

According to the county, the Environmental Protection Agency does not require people to relocate or take special precautions during the spraying. However, residents may choose to stay indoors, keep windows shut, turn off fans or air conditioners, and keep pets and children's toys indoors to avoid exposure.

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BUFFALO NEWS

Landowners, DEC, Sierra Club fight back in National Fuel pipeline case

By Thomas J. Prohaska

September 16, 2019



As National Fuel and the state Department of Environmental Conservation continue their legal battles over a pipeline that would carry natural gas from Pennsylvania through Western New York, residents in the affected areas still are playing a role in opposing the project.

"We've still got this hanging over us. It's been five years," said Paula Hargreaves of Pendleton, as the battle continued with more court filings last week.

She is one of seven affected property owners who joined the DEC and the Sierra Club in arguing that National Fuel shouldn't be allowed to accelerate the approval process for the \$500 million Northern Access pipeline.

The company said in federal filings last month that it hopes to accomplish that by skipping litigation over the state's rejection of a permit for the pipeline to cross 192 streams in Western New York.

The 96.5-mile pipeline would carry fracked natural gas from Pennsylvania through Allegany, Cattaraugus and Erie counties.

In Niagara County, National Fuel's Empire Pipeline subsidiary plans a 2-mile pipeline extension and construction of a compressor on Killian Road in Pendleton and a gas dehydration station on Liberty Drive in Wheatfield.

The latter facility is needed to take enough water out of the gas to comply with Canadian regulations, since the gas is to be pumped into a Canadian pipeline under the Niagara River.

The package of work also includes construction of an interconnection between National Fuel's pipeline and the Tennessee Natural Gas pipeline in Wales.

On Feb. 5, the U.S. Second Circuit Court of Appeals invalidated the DEC's 2017 rejection of the water quality permit, saying the DEC didn't adequately explain its decision. But the court allowed the DEC to try again.

The DEC rejected the water quality permit again last month, but National Fuel contended that by missing a deadline to issue the 2017 rejection, the DEC in effect waived all future control of the project.

In briefs sent to FERC last week, the DEC and the private-sector pipeline foes contended that by giving the DEC a chance for a do-over, the Second Circuit in effect ruled that there was no waiver of the department's authority over the stream crossings.

"New York State, to be honest, has been marvelous," Hargreaves said. "The New York State DEC hasn't given up on us."

However, FERC has twice ruled in National Fuel's favor on the stream crossing issue.

Ann Marie Paglione of Pendleton said eight families living within a mile of the compressor site underwent baseline health testing four or five years ago for comparison with future tests that would be administered if the project is ever built.

Another legal issue entangling the pipeline project is National Fuel's desire to use eminent domain to seize pieces of private land along the planned route.

The eminent domain case is before the state Court of Appeals, which is expected to hear arguments in November, according to W. Ross Scott, an Allegany County attorney representing the affected landowners.

The issue is whether National Fuel is allowed to skip the normal eminent domain procedure in state law because FERC granted a certificate of "public convenience and necessity" to build the pipeline, even though the DEC has refused the water quality permit.

The case is named after Joseph Schueckler, an Allegany County resident who filed suit before he died a few months ago, Scott said. Schueckler's widow, Theresa, is carrying on the lawsuit.

National Fuel won in State Supreme Court, but the Schuecklers won in the Appellate Division. The decision there last year said, "Can a corporation involuntarily expropriate privately-owned land when the underlying public project cannot be lawfully constructed? We answer that question firmly in the negative."

Scott contended that if National Fuel wins the case, it will be allowed to take his clients' land whether or not the pipeline is ever built.

"That will be a major issue, because it's never been decided in any state whether (a company) is entitled to eminent domain whether they build a project or not," Scott said.

"National Fuel (is) moving forward with securing land rights in the event the project does move forward and we can proceed without additional delays," company spokeswoman Karen L. Merkel said.

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## MID-HUDSON NEWS

### [Serino presents Lyme disease awareness information](#)

September 16, 2019



State Senator Susan Serino (R, Hyde Park) hosted an event at the Poughkeepsie Galleria mall on Sunday designed to educate children and families on Lyme disease and other tick-borne illnesses.

The event brought out a number of local organizations with interactive activities to help mall-goers learn about the disease and how to prevent it.

The cause holds special meaning for Serino, whose brother suffered from the disease after not being diagnosed for over 10 years and whose son was thought to have had symptoms but is healthy now.

"It's amazing how some people are so debilitated," she said. "Any time I can talk ticks, I will do it."

Dutchess County Legislator Donna Bolner (R-13), who serves as chairwoman of the Tick Task Force, noted it is important to raise awareness of Lyme disease all year long.

"They are just as at risk as they are at the beginning of tick season and we are always competing with the flu season and since some of the symptoms can actually mimic one another, I would really hate for our residents to discount the fact that they got a tick in the fall and then think that it's flu instead of tick-borne disease and not treat it as such because otherwise they could become chronic by the spring before they figure out that it's actually a tick-borne disease rather than the flu," Bolner said

Matthew Frye and Cassandra Guarino from Cornell University both came to represent the university's research on tick-borne illnesses.

"We are excited that Senator Serino is creating these events where the public comes for us," said Frye. "People are already here [at the mall], and we can teach people about tick-borne disease who may not otherwise easily access this information."



Guarino, a veterinary medicine professor, addressed the impact of tick-borne diseases on people and animals. "It's important for me to make sure people are aware of the risks associated with being bitten by ticks," she said. "Today is an opportunity for me to share that awareness."

A tick mascot named Luna made an appearance on behalf of the Lyme Disease Network and was happy to represent the cause. Alyssa Kogon, district coordinator for Serino, served as interpreter for Luna.

"It's very important that the tick is represented here in the community so young children can immediately find out what's wrong and go to find help," Kogon said.

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NEWSDAY

[Illegal dumping ringleader: 'I apologize to the people of Suffolk County.'](#)

By Michael O'Keeffe

September 16, 2019

The man Suffolk prosecutors say was the ringleader of an illegal dumping operation apologized for his actions Monday, claiming he was unaware the scheme had left contaminated landfill at homes and businesses across Long Island.

"I apologize to the people of Suffolk County and anybody who did receive the contaminated material," Anthony "Rock" Grazio, of Smithtown, said in a Riverhead court before his sentencing was adjourned. "I just want them to know it was not done intentionally."

Suffolk District Attorney Timothy Sini challenged Grazio's apology, saying it was clear from wiretaps and other evidence the dirt broker knew he was supplying contaminated fill to construction sites and landscaping projects.

Prosecutors have said Grazio led the largest illegal dumping scheme prosecuted in New York State history. An investigation into the scheme, dubbed "Operation Pay Dirt," led to the unsealing of a 130-count indictment in November. Grazio was one of 22 people and nine businesses charged in the indictment.

Grazio, 54, pleaded guilty to two counts of second-degree criminal mischief, two counts of endangering public health and other charges in May. He was expected to be sentenced to two to four years in prison Monday by Suffolk County Court Judge Timothy Mazzei, but Mazzei rescheduled the sentencing until Sept. 22 so Grazio can be with his ill wife.

Sini, however, said conversations caught on wiretaps and other evidence show that Grazio knew he was selling fill that contained toxic substances.

Grazio got construction debris from trucking and demolition companies, which he then provided to unwitting property owners who needed clean fill for landscaping or their own construction, prosecutors have said.

Some of the fill was contaminated with diesel fuel, volatile organic compounds, heavy metals and other toxic substances, according to prosecutors.

The waste ended up at 21 locations in Suffolk County and three in Nassau, prosecutors said. Seventeen of those locations were homes. Six locations — four of them homes — had acutely hazardous material dumped there, Homeowners have had to pay for the removal of the contaminated fill, put their home improvement projects on hold and in some cases lost the use of their property.

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NEWSDAY

[U.S. Navy says in letter to state that it opposes cleanup plan for Bethpage plume](#)

By BNY Mellon

September 16, 2019



The U.S. Navy is opposing the state's \$585 million proposal to fully clean up and contain groundwater pollution coming from the former Northrop Grumman and Navy-owned facilities in Bethpage and accused the state of not basing its plan on science.

State officials defended their process, while Bethpage water and town officials said the Navy and Northrop Grumman, who are responsible for Long Island's largest groundwater plume containing carcinogenic contaminants, continue to downplay concerns and advocate only for modest steps toward a cleanup.

The Navy's comments follow Northrop Grumman's response in August, with the Virginia-based aerospace and defense company calling the state's cleanup proposal "unnecessary, infeasible, and impractical" — and requesting that it be withdrawn.

Their opposition sets up a potentially fierce fight over the cleanup — and who pays for it. Gov. Andrew M. Cuomo has vowed that if Northrop Grumman and the Navy do not pay for the cleanup, the state will proceed with its plan and seek reimbursement from them later.

The Navy, in a Sept. 6 letter, wrote that the state's proposal for two dozen water extraction wells, miles of pipes and a series of treatment systems would interfere with remediation plans that already protect public health and fails to consider how difficult it will be to acquire the necessary land in the densely populated area. The letter, submitted as part of the state's review process, was sent with 17 pages of technical comments.

The state will not adjust its timeline of the proposed cleanup as a result of the letter, according to the New York State Department of Environmental Conservation. The state estimated that it will take five years to fully design and implement the plan, and 110 years to fully clean up the pollution plume.

In its broadest criticism, the Navy said the "inadequacies" in the state's more aggressive approach trace to a 2014 state law that required the state to look at fully containing the plume with a series of wells. That law "marked a dramatic turning point from a collaborative, science-based, and legally grounded remediation strategy to a reverse-engineered, predetermined outcome strategy," Deputy Assistant Secretary of the Navy Karnig Ohannessian wrote to DEC Commissioner Basil Seggos.

State environmental officials said the plan is based on a \$6 million study that includes groundwater modeling done by the U.S. Geological Survey.

The state "has exhaustively investigated the plume using the latest science and technology. We know now that containment and treatment are possible," Martin Brand, deputy commissioner of remediation and materials management with the DEC, said in a statement.

The 2014 law, signed by Cuomo, led to a preliminary study in 2016 that found hydraulic containment might be feasible, Brand said. In 2017, Cuomo directed the DEC to expand its investigation to conclusively determine if full hydraulic containment was feasible.



Groundwater pollution from the 600-acre cleanup site, 105 acres of which were owned by the Navy, first closed Bethpage Water District drinking water wells in 1976. The state declared it a Superfund site in 1983.

The pollution plume has been spreading a foot per day, and is now 4.3 miles long, 2.1 miles wide at its widest point and up to 900 feet deep, according to the DEC. It contains at least 24 contaminants, including the solvent trichloroethene, or TCE, a human carcinogen, and emerging contaminant 1,4-dioxane, a likely carcinogen that can't be removed through traditional treatment methods.

Local water officials said the Navy's approach has led to a growing plume of groundwater pollution spreading south from the center of Nassau County.

"They almost march standing still. They make very little headway moving down the street," said Mike Boufis, superintendent of the Bethpage Water District. "It just seems to us like another stall tactic and we find it unacceptable."

Richard Humann, president and CEO of H2M architects + engineers, Bethpage Water District's longtime consultant, said the existing treatment plan has proved inadequate, though water districts continue to treat water to state and federal standards before it's delivered to taps.

"The plume is worse than it has ever been. The program is a complete failure. And the Navy is responsible," Humann said. "Clearly, whatever they have been applying to the program has not worked, and that's indisputable. So to continue to go down this path of, 'Let us continue to do what we've been doing and hope it gets better,' isn't acceptable."

Oyster Bay Town Supervisor Joseph Saladino, who sponsored the 2014 law as an assemblyman, said, "The Navy must stop throwing up roadblocks, stop putting a price tag on the health and safety of our residents and start accepting responsibility for their actions."

Bret Bennington, a professor of geology at Hofstra University, who teaches a course on groundwater, said polluters typically advocate for less-protective — and less-expensive — measures.

He said the state plan "errs on the side of caution. When you're dealing with a sole source aquifer like we have on Long Island, which is an incredibly precious resource, you should err on the side of caution."

Sen. Chuck Schumer (D-N.Y.), in a statement, called the Navy's response "disappointing."

"From day one, I have pushed the polluters, Navy-Grumman, to do more aggressive and comprehensive remediation, rather than treating drinking water sources after they are contaminated by the toxic plume," he said. "It is disappointing that, in their comments, the Navy does not fully embrace the DEC's more aggressive proposal, but I will continue to work with the state, local water authorities and others to push the polluters to accept responsibility and pursue the most effective cleanup strategy with all due speed."

In its letter, the Navy said it would continue to study the state's proposal as part of a regular five-year review. Among the Navy's criticisms is that the state proposal "fails to adequately assess whether the cost of the proposed remedy is proportional to the overall effectiveness."

Northrop Grumman has been operating an on-site containment system of five extraction wells at the former site since 1998 in an attempt to keep existing contamination on-site. The company said in a statement it has spent \$200 million on plume cleanup and study to date. The Navy, which is operating the only system set up to remove contamination outside the former facilities, estimates it has spent \$131 million.

The Bethpage Water District has complained in the past that too much money had been spent on consultants and studies, rather than removing contamination or helping pay for treatment at its drinking water wells.

## **NEXT STEPS**

The state in May released a \$585 million proposal to clean up groundwater pollution from the former Northrop Grumman and Navy site in Bethpage and stop its spread. Public comment for the proposal ended July 8. Northrop Grumman opposed the plan and said the state should start again. The Navy also has submitted comments opposing the plan. Here's what's next:

- The state Department of Environmental Conservation previously has said it expects to formally respond to comments about the plan by the end of the summer. The state then will issue a formal decision on the plan, known as an Amended Record of Decision. The state could move forward with its preferred proposal, modify it, select another option or start the process over.
- The state then would formally request the Navy and/or Grumman to implement the selected plan. If they do not, Gov. Andrew M. Cuomo and other state officials have said the state aims to implement the plan, and seek reimbursement for their costs from the polluters.
- The state's report estimated that it will take five years to fully design and implement the plan, and 110 years to fully clean up the pollution plume.

## ABOUT THE PLUME

- Considered Long Island's largest groundwater pollution source, it contains at least 24 contaminants, including the solvent trichloroethene, or TCE, a human carcinogen, and the emerging contaminant 1,4-dioxane, a likely carcinogen that can't be removed through traditional treatment methods.
- The groundwater pollution comes from the 600-acre site in Bethpage once operated by Grumman, now Northrop Grumman, 105 acres of which was owned by the Navy and leased to the company. The Bethpage site was a hub of aerospace manufacturing on Long Island from the 1930s to 1990s, including work on military aircraft and the Apollo moon lander.

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## ABC NEWS

### [Lead pipes that tainted Newark's water are found across US](#)

By DAVID PORTER and MIKE CATALINI (AP)

September 16, 2019

A drinking water crisis in New Jersey's biggest city is bringing new attention to an old problem: Millions of homes across the U.S. get their water through pipes made of toxic lead, which can leach out and poison children if the water isn't treated with the right mix of chemicals.

Replacing those lead pipes is a daunting task for cities and public water systems because of the expense involved — and the difficulty of even finding out where all those pipes are. Only a handful of states have put together an inventory of the buried pipes, which connect homes to water mains and are often on private property.

But after drinking water emergencies in Washington, D.C.; Flint, Michigan; and now Newark, some experts are calling again for a rethinking of the theory that treating the pipes with anti-corrosive agents is enough to keep the public out of danger. Instead, the lead lines should be replaced, they say.

"It's hard to come up with an argument against it," Manny Teodoro, a public policy researcher at Texas A&M, told New Jersey lawmakers this week. "Look, lead service line replacement is expensive, but it's also removing poison from the bodies of ourselves and our children. It's difficult to think of many things that are more important."

Done correctly, chemical treatment should be enough to keep water in line with federal regulations, according to Peg Gallos, executive director of the Association of Environmental Authorities, a group representing water utilities. But in cases where the chemicals fail, pipe replacement becomes an option, she said.

People in about 15,000 households in Newark were told to drink only bottled water last month after the Environmental Protection Agency warned that the city's efforts to control lead contamination weren't working.

Since then, residents in the largely poor, mostly black and Hispanic city have had to line up in summer heat for cases of free water distributed by government agencies.

The crisis has unfolded over several years, with city officials insisting until recently that everything was under control.

Numerous city schools switched to bottled water because of lead contamination in 2016. Tests in 2017 found that 1 in 10 Newark homes had nearly twice as much lead in their water as allowed by the federal government. The state Department of Environmental Protection issued a warning to the city and public health advocacy groups complained, but Mayor Ras Baraka defended the safety of the city's water by sending residents a brochure condemning what he said were "outrageously false" claims about lead contamination.

Later, consultants concluded that the city's corrosion control treatment for one of its main water supplies wasn't working. New chemicals were introduced this spring, but it will be months before their effectiveness can be accurately gauged. The city handed out filters beginning last fall, but then the EPA warned that they might not working.

Newark's water crisis shares some similarities to the ones in Flint and Washington, D.C.

Flint's lead levels spiked in 2014 after the city switched its water source from Lake Huron, which was being treated with the anti-corrosive orthophosphate, to the Flint River, which was not treated. Washington's high levels between 2000 and 2003 resulted from the city's switching anti-corrosion chemicals from chlorine to chloramine.

Experts estimate there could be as many as 10 million lead service lines nationwide but only five states require inventories or maps of their locations, according to the Association of State Drinking Water Administrators. A handful of other states have set up voluntary reporting.

That leaves dozens of states with incomplete knowledge of where and how much of the toxic plumbing they have.

"The biggest problem we face is we don't know where these lead pipes are," said Marc Edwards, an environmental engineering professor at Virginia Tech University. "In Flint, ultimately we had to dig up every single yard to find out what pipe was there because the records were so bad."

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Newark is now racing to try and replace all of its roughly 18,000 lead service lines, with the help of a county-backed, \$120 million loan.

While cost is a factor — in Newark, it will cost about \$10,000 per home to replace the pipes — so is the diffuse nature of water utilities. Teodoro estimated there are about 50,000 water systems in the U.S., many of them small systems. And in many cases the location of pipes isn't even written down, Mary-Anna Holden, a commissioner on New Jersey's Board of Public Utilities, told lawmakers recently.

"I asked the superintendent 'Where's the map of the system?' He's pointing to his head. Like his grandfather and great-grandfather had started the water system so he knew where every valve was," Holden said.

The most common source of lead in water comes from pipes, faucets and fixtures, rather than from water sources, according to the Environmental Protection Agency. Congress banned the use of lead in water pipes in 1986, citing lead's harmful effects on children's nervous systems. In 1991, federal regulators began requiring water systems to monitor lead levels in drinking water and established a limit of 15 parts per billion.

Since the Flint water crisis, some states have gone farther. Michigan last year lowered its threshold to 12 parts per billion. Experts say no amount of lead is safe for children.

Kim Gaddy, 55, works as an environmental justice advocate for Clean Water Action. She's a renter in Newark and had her lead service lines replaced by the city shortly before the two positive lead tests led to the city handing out bottled water.

She says she thinks it's time for state and federal officials to require replacing lead service lines, no matter what the cost might be.

"My message would be let's protect the health of (residents) and provide them with safe, affordable drinking water from the taps," Gaddy said.

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## BUFFALO NEWS

### [Letter: Tonawanda Coke cleanup will be properly executed](#)

By Staff

September 12, 2019

Residents concerned about plans to clean up the contaminated former Tonawanda Coke site should let the state's recent record of aggressive enforcement actions that ultimately led to Tonawanda Coke's closure put them at ease. The New York State Department of Environmental Conservation (DEC) will accept nothing less than a comprehensive cleanup of this property that is fully protective of public health and the environment.

To be clear, the planned public auction of the Tonawanda Coke property will not determine future cleanup plans for the site. The new owner will be required to enter into an appropriate remedial program. Regardless of the entity that purchases the property, DEC remains committed that this site will be subject to a comprehensive cleanup performed to the same stringent levels of protectiveness, regardless of whether it is performed under the Superfund or brownfield cleanup programs.

In addition, the sale order preserves all rights of DEC and U.S. Environmental Protection Agency with respect to environmental liability claims related to the property and includes a stipulation granting unrestricted site access to both state and federal environmental agencies.

DEC will exhaust all legal avenues to hold accountable those responsible for the contamination at Tonawanda Coke. And like every state-led cleanup in New York State, DEC will rigorously monitor the cleanup of this contaminated property and provide information to the community to ensure neighborhood residents are informed each and every step of the way.

Martin Brand

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## NATIONAL

### Associated Press

#### State: Proposed deal with company would reduce air pollution

<https://www.apnews.com/2fd04d3438574ffdb77cfc8df8422e0b>

An Alabama chemical plant has been emitting sulfur dioxide and sulfuric acid mist into the atmosphere, state and federal authorities say in court documents.

A complaint recently filed in federal court accuses Nouryon Functional Chemicals of polluting the air from its sulfuric acid plant in the Axis community, north of Mobile.

The company did a major modification of its sulfuric acid unit without obtaining the proper permits or installing required technology, among other things, the U.S. Environmental Protection Agency said in a statement.

The EPA and the state are proposing a settlement with the company — part of a process that will include a 30-day public comment period.

The EPA says the proposed consent decree would substantially reduce chemical emissions and improve the air quality in communities near the plant. The agency says the plant's sulfuric acid unit was constructed in 1956, and is one of the oldest areas of the facility.

The company did a major modification on the unit without obtaining the proper permits before that project or using the best available technology to control emissions of sulfur dioxide and sulfuric acid mist, the EPA said.

Sulfur dioxide can affect the respiratory system and lead to such health problems as emphysema and increased asthma symptoms. It is "a major precursor of acid rain, which has acidified soil, lakes and streams, damaged vegetation and accelerated corrosion of buildings and monuments," the EPA said in the statement.

Sulfuric acid mist can cause irritation of the skin, eyes, nose and throat, and lungs.

However, compliance measures proposed in the settlement agreement would reduce both types of emissions and improve the air quality for people in the area of the plant, the agency said.

"It is important that facilities comply with Clean Air Act requirements to ensure that people in the surrounding communities are able to enjoy healthy air quality," Mary Walker, an EPA executive, said in the statement.

The company did not immediately respond to calls and emails requesting comment.

The proposed agreement between the state and federal governments and the company would not be finalized until a 30-day public comment period. That begins on the date the notice of the agreement is published in the Federal Register.

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## **Bloomberg Environment**

### **California Has Biggest 2019 Wildfire as NASA Warns on Climate**

<https://news.bloombergenvironment.com/environment-and-energy/california-has-biggest-2019-wildfire-as-nasa-warns-on-climate>

**By Steve Geimann**

- Area of state hit by fire has expanded fivefold in 40 years
- Massive Amazon wildfires worsened air quality in Sao Paulo

California's biggest wildfire of the year has already burned more than 50,000 acres of timber and grass as NASA scientists say climate change is making such blazes more likely and harder to stop.

It's a sobering scenario for the U.S. state with the highest wildfire risk, where land damaged or destroyed by fire has expanded fivefold over the last four decades. Almost a half-million homes worth an estimated \$268 billion are threatened, according to Zillow. At 78 square miles, the area being torched is about a quarter the size of New York City.

"We're living in a warming and a drier world, and with climate change we're going to continue to see conditions that make fire s more likely," Doug Morton, chief of the Biospheric Sciences Laboratory at NASA's Goddard Space Center, said in a broadcast this week. "They'll be definitely harder to suppress."

The Walker fire, within the Plumas National Forest northeast of Sacramento, has been burning since Sept. 4 and became California's biggest of the year on Friday. NASA satellites show plumes of smoke blowing east into Nevada and crossing Pyramid Lake. The National Interagency Fire Center expects above-normal conditions for large fires in California through October.

California leads the nation in wildfire risk, with more than a quarter of the state's properties considered at high-to-extreme peril, according to the Insurance Information Institute, a New York-based industry group.

California's fire season has expanded by 75 days across the Sierras and corresponds with an increase in the extent of forest fires across the state. Last year, California accounted for about a fifth of the 8.8 million acres burned nationally, according to the Fire Center. The U.S. spent more than \$3.1 billion fighting fires last year.

"As climate conditions make vegetation and other fuels that are on the ground today more flammable, it's likely we'll see more fires, and the fires that do start will be more extreme," Morton said from the center in suburban Washington

Global warming also contributes to an increase in wildfires in regions such as the Amazon, the scientists said. In the first eight months of 2019, Brazil had almost 94,000 fires, the most since 2010. More than half have been in the Amazon, including the massive fire that started in August and triggered a state of emergency in Brazil.

Swept-up smoke from those fires created "among the most unhealthy air quality conditions" anywhere in the last month in downwind areas of Brazil, Peru and Bolivia, Morton said.

## **Smoke Chemistry**

In the U.S., NASA and the National Oceanographic and Atmospheric Administration this year are sending a fleet of science aircraft to analyze smoke chemistry far downwind from fires in the west and agricultural fires in the southeast.

NASA also studied Alaska's 2015 fire season, in which a record 5.1 million acres burned. The researchers found an unusually high number of lightning strikes, generated by warmer temperatures that cause the atmosphere to create more convection — thunderstorms — which contributed to a larger burned area.

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## **Bloomberg Environment**

### **EPA Delays Tighter Air Limits for Carcinogen Ethylene Oxide (1)**

<https://news.bloombergenvironment.com/environment-and-energy/epa-delays-tighter-air-pollution-limits-for-carcinogen-ethylene-oxide>

**By Amena Saiyid**

- EPA to issue proposed rule 'in coming months' to tighten toxic air limits for commercial sterilizers
- Move delays any new restrictions until at least next year, though EPA had promised action this summer

The EPA is no longer planning to propose toxic air pollution limits for carcinogenic ethylene oxide releases from medical sterilizer facilities this summer, as promised earlier.

Instead, the Environmental Protection Agency quietly announced Sept. 13 it would take a series of steps that will delay any action until later, including the release of an advanced notice of proposed rulemaking next month. This notice, on which the agency will take public comment, will "outline the potential approaches that EPA could take in its upcoming rule, along with the technologies available for controlling ethylene oxide emissions."

The agency said it plans to issue the actual proposed rule "in the coming months," according to a separate statement.

The EPA said it also would invoke its Clean Air Act authority to require companies to provide data on specific facility characteristics, control devices, work practices, and costs associated with installation and operation of emission reduction measures.

Because a third of the companies that use ethylene oxide to sterilize medical equipment—and EPA estimates there are more than 100 such facilities nationwide—are considered small businesses, EPA said it also may convene a small business advisory panel to review its actions.

The agency said it needs this additional information to ensure "we have a solid data-based record to support rulemaking."

## **‘Not Uncommon’**

It is “not uncommon or particularly unusual” for the EPA to issue an advanced notice or ask companies for data, Stan Meiburg, who served as EPA’s acting deputy administrator during part of the Obama administration, told Bloomberg Environment.

“Even though ethylene oxide has received a lot of attention lately, there are many useful pieces of information that the data will reveal to the agency,” Meiburg said.

For instance, states are taking a lot of actions on their own, he said; One of the advantages for the EPA to gather this data is to get a clear handle on what is going on in the industry and states.

Given though it is the middle of September, “the likelihood the EPA will issue a notice of proposed rulemaking before the end of this year seems slim, Meiburg said.

## **‘Lack of Urgency’**

The EPA has been promising for months to release a proposal to tighten ethylene oxide emissions limits from medical sterilizer facilities, which have remained unchanged since they were set in 1994 and modified in 2001.

But its decision to seek an advanced notice of proposed rulemaking delays the actual proposal for revised toxic air limits for ethylene oxide, a flammable, combustible gas that the EPA says increases cancer risks.

Ethylene oxide emissions have garnered attention across the country, including in Illinois and Georgia, especially since the agency’s own researchers concluded in late 2016 that ethylene oxide is at least 30 times more carcinogenic than previously understood.

Since then, communities where commercial medical sterilizers use this toxic chemical have been waiting for the EPA to act, while stepping up the pressure on their own state governments.

A group calling itself “Stop Sterigenics Georgia,” which has been trying to halt the operations of the Sterigenics U.S. LLC medical sterilizer facility in Cobb County in the greater Atlanta area, said it was disappointed with the EPA’s decision.

“We understand the slow-moving nature of government agencies and our organization will participate in the public comment process,” Janet Rau, president of Stop Sterigenics Georgia, said in a text message late Sept. 13. “We are, however, disappointed in the lack of urgency by the EPA as we believe that any more delays in recognizing the danger of ethylene oxide are continuing to put our communities at risk.”

(Updated article with response from EPA and from a former EPA official.)

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## **Bloomberg Environment**

### **Feds Can Bring Criminal Charges Under Clean Air Act, Judge Says**

<https://news.bloombergenvironment.com/environment-and-energy/feds-can-bring-criminal-charges-under-clean-air-act-judge-says>

#### **By Porter Wells**

- Criminal charges follow major 2012 explosion in Montana
- Defendant challenged law as ‘unconstitutionally vague’

The president of an oil and gas waste processing facility failed to convince a federal judge in Montana that the government can’t use the Clean Air Act’s general duty clause to pursue criminal charges against him.

Vapors from a mislabeled tanker truck ignited and exploded at the Custom Carbon Processing Inc. facility near Wilbaux, Mont., in 2012, injuring three employees and remaining on fire for more than a week.

CCP company executives were aware that the facility wasn't properly wired, ventilated, or otherwise safe for disposal and reclamation operations, according to internal emails and witness accounts from before the accident. One of CCP's managers, Mark Hurst, pleaded guilty in February to a charge of negligent endangerment under the CAA.

CCP President Peter Margiotta has pleaded not guilty and tried to argue the CAA's general duty clause only supports the recovery of civil penalties, not criminal ones, because of how the law cites to a similar provision of the Occupational Safety and Health Act, which only allows for civil recovery.

But the citation is just a reference to the OSH Act for clarity and isn't an incorporation into the CAA of the OSH Act's standards and penalties, Judge Susan P. Watters said Sept. 13 for the U.S. District Court for the District of Montana.

Margiotta's proposed reading of the two laws would create an "absurd" federal scheme where the Clean Air Act could be used to impose sanctions for OSH Act violations, Watters said.

Nor is the general duty clause unconstitutionally vague on its face, Watters said. The clause's plain language directs owners and operators of facilities to identify hazards, design and maintain a safe facility, to take steps to minimize accidental releases and to mitigate those that occur, she said. Margiotta had "fair notice that his alleged conduct was forbidden," she said.

The court denied Margiotta's motion to dismiss one of the counts in the indictment. He's also accused of conspiracy to violate the CAA and knowingly releasing hazardous pollutants into the air with the awareness it placed others in danger of harm or death.

Woody's Trucking LLC was ordered in 2018 to pay \$1.3 million in penalties related to the accident and its owner, Donald Wood Jr., was sentenced to a year and a day in jail in separate proceedings.

The Hoovestall Law Firm represents Margiotta.

The case is USA v. Margiotta, D. Mont., No. 17-cr-00143, 9/13/19.

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## **Energywire**

### **Gas prices could leap after attack, as CO2 falls**

<https://www.eenews.net/energywire/stories/1061124783/>

[Nathaniel Gronewold](#), **E&E News reporter**

The weekend attack on the world's largest oil processing facility in Saudi Arabia has halted a massive flow of crude to global oil markets, prompting analysts to predict rising gas prices in the U.S. and abroad.

The global economy may feel the effects next.

Officials at the Saudi Arabian Oil Co. confirmed that a drone attack against its Abqaiq and Khurais processing plants disrupted the daily production of 5.7 million barrels of oil. That's a little over half of Saudi Arabia's crude output, or 5% of the world's daily oil supply.

Motorists will feel the pinch.

"This could take a longer time than the authorities initially are claiming," predicted Per Magnus Nysveen, head of analysis at Rystad Energy, in a note. "Also, the U.S. cannot quickly replace this volume," given export constraints and the availability of tankers, he added.

There were no fatalities or injuries reported from the attack. Saudi Aramco CEO Amin Nasser said in a statement that the fires at the facilities were out and repairs are underway. Houthi rebels fighting in neighboring Yemen claimed



responsibility for flying 10 explosive drones into the plants, calling it retaliation for Saudi Arabia's military campaign against them. The U.S. government blames Iran for the attack.

"We are gratified that there were no injuries," said Nasser. "Work is underway to restore production."

The attack left global crude markets on edge and anticipating an immediate spike in oil prices. The longer it takes to repair the Abqaiq and Khurais facilities the worse it will be for motorists.

Analysts at Rystad and S&P Global Platts see oil prices spiking by at least \$10 per barrel this week. That equates roughly to an increase of 25 cents per gallon in gasoline prices. North American West Texas Intermediate (WTI) crude was trading in the range of \$60 a barrel before the attack, with the Brent international crude benchmark floating around \$67.

Some analysts are speculating that the price of oil could eventually reach \$100 per barrel. Those are among the more optimistic scenarios.

A darker view envisions a doubling of Brent and WTI benchmark crude values by October as companies and major oil consumers rush the market. Corporations operating vehicle fleets, airlines and even universities could jump into a buying frenzy to hedge against higher prices this winter if it takes Saudi Aramco longer than anticipated to resume its production, said Ed Hirs, an energy economist at the University of Houston and director of Hillhouse Resources LLC.

"If this appears to be more than just a couple of weeks, three week-type interruption, then 5 million barrels a day or whatever the actual number is, that's 5% of the world oil market," he said. "And according to our math that we did in our research on crude oil imports and national security that would lead to a price increase of well over 100%, so a doubling."

That means WTI could soar toward its record high price of \$148 per barrel, last seen in 2008 just before the global financial crisis.

Analysts are also raising concerns that the drone attacks and the loss of half of Saudi Arabia's crude flow could be big enough to tip much of the global economy into recession.

"Attacks on Saudi Arabia's pivotal Abqaiq processing facility and Khurais oil field have raised questions over the kingdom's, and also the world's, security of crude supply," said Singapore-based S&P Global Platts researchers in a note.

Analysts at ClearView Energy Partners also expect a \$10-per-barrel price spike within a week, assuming the Saudi facilities remain offline for at least three weeks. Prices would continue to climb the longer the infrastructure is shuttered. Efforts to replace the crude with supplies from strategic reserves and other sources will "come up short," says ClearView.

"Confirmation of extensive damage could give governments incentives to expeditiously announce releases of strategic reserves, even if those announcements may precede actual releases by days to weeks," ClearView predicts.

President Trump sought to soothe financial markets and motorists yesterday by authorizing the release of oil from the U.S. Strategic Petroleum Reserve. He claimed the potential release could keep the markets well supplied.

"I have also informed all appropriate agencies to expedite approvals of the oil pipelines currently in the permitting process in Texas and various other States," Trump tweeted.

The SPR holds 630 million barrels of crude underground in natural and manmade salt caverns in Texas and Louisiana. Connecting it to the global crude market is easier said than done, however.

"The SPR can be drawn down at a max rate of 4 million barrels per day, but to absolutely face up to it, if they turned it on tomorrow the best they could do is probably half a million and then ramp up," said Hirs of the University of Houston.

### **Higher EV sales?**

A long disruption of Saudi oil supplies could result in a noticeable drop in industrial emissions of carbon dioxide, once they are calculated. Just how big the drop in CO2 would be depends on the disruption's effect on the global economy.

"Obviously to the extent that less oil gets to the market there will be less emissions," Hirs said.

According to EPA's Greenhouse Gas Equivalencies Calculator, consuming one barrel of crude oil results in the release of 0.43 metric tons of CO<sub>2</sub>. That suggests the outages the Saudis are reporting could prevent the release of 2.45 million tons of CO<sub>2</sub> per day.

The real impact on the atmosphere will come from vehicle miles driven, however, and from slower global economic activity as a result of higher energy costs.

Higher gasoline prices are correlated with less driving and changing consumer vehicle preferences. The 2014-15 oil price crash led to more driving, higher emissions from transportation and more sales of heavy-emitting trucks and SUVs. A crude price spike could cause the opposite.

Expensive crude oil also correlates well with slower economic growth and recessions, which drive global emissions lower.

Economists will be paying attention to the impact of higher pump prices on a global economy that's already reeling from the U.S.-China trade war and the United Kingdom's planned withdrawal from the European Union, or "Brexit."

Hirs sees one bright spot in terms of climate considerations.

"If this is a long-term interruption, supply interruption, this bodes really, really well in the U.S. for electricity-fueled vehicles, EVs," he said.

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## Politico

### Wheeler pool of air quality experts includes consultants for UARG, industry groups

<https://subscriber.politicopro.com/article/2019/09/wheeler-pool-of-air-quality-experts-includes-consultants-for-uarg-industry-groups-1732916>

**BY ALEX GUILLÉN**

A group of experts selected by EPA Administrator Andrew Wheeler to advise an EPA panel on potential changes to the ozone and particulate matter pollution standards includes several people who have criticized efforts to strengthen those rules on behalf of industry groups, including the now-defunct Utility Air Regulatory Group.

Wheeler created the consultant pool in response to criticisms from some Clean Air Scientific Advisory Committee members over his earlier decision not to create the traditional review panels of experts to aid the main seven-member body during its air quality reviews.

The pool "will provide technical expertise to help CASAC ensure a rigorous and timely review of the National Ambient Air Quality Standards for particulate matter and ozone," Wheeler said in a statement.

At least two of the 12 experts have connections to UARG, the coalition of coal-heavy utilities that opposed many Obama-era regulatory efforts. Former EPA air chief [Bill Wehrum](#)'s ties to UARG drew scrutiny from Democrats, and he left the agency in June.

John Jansen, a former principal scientist for former UARG member Southern Co., [testified](#) before CASAC in 2012 on behalf of UARG regarding background ozone levels.

In addition, D. Warner North, an independent consultant, lists UARG as a former client [on his website](#). North said he prepared and presented testimony to CASAC "on the health impacts of particulate matter and of sulfur dioxide" for UARG. In the 1990s, North served on both CASAC and EPA's Science Advisory Board, according to government records.

Another member, Sonia Sax, argued in 2014 both [before CASAC](#) on behalf of the American Petroleum Institute and in a [Wall Street Journal op-ed](#) that there would be "no significant benefit from lower standards" for ozone. The Obama

administration ultimately did lower the standard. (Sax worked at the firm Gradient at the time but now works for Ramboll, Inc.)

In December 2018, Sax testified before CASAC about particulate matter pollution on behalf of the American Wood Council, the Aluminum Association and the American Iron and Steel Institute. Sax criticized EPA's draft particulate matter science review, known as an integrated science assessment, arguing that it "lacks transparency and is prone to risk of bias and potentially unreliable conclusions."

An EPA spokesperson said the pool's members "are all highly regarded experts in their fields." All of the candidates filed financial disclosure forms that were reviewed and approved by EPA ethics officials, who "did not identify any conflicts of interest for the 12 consultants that were selected," the spokesperson said.

The pool includes three more consultants, Lorenz Rhomberg of Gradient and independent consultants Frederick Lipfert, a former Brookhaven National Laboratory researcher, and David Parrish, a retired NOAA researcher.

The remaining six members are academics: Constantin Aliferis of the University of Minnesota; Brent Auvermann of Texas A&M University; Daniel Jaffe of the University of Washington-Bothell; Kristen Johnson of Washington State University; Joseph Lyon of the University of Utah; and Duncan Thomas of the University of Southern California.

Chris Frey of North Carolina State University, a former CASAC chairman who has been critical of the Trump administration's regulatory rollbacks, criticized Wheeler's use of a pool, saying that the group was short on expertise in epidemiology compared to what would be expected from a traditional review panel.

Wheeler should have stuck to the traditional review panels of experts that included specialists in fields useful to CASAC, Frey said. An "ad hoc pool of consultants" will offer less help to CASAC than the expert panels because they will have limited interactions with CASAC members and because the pool selected by Wheeler is significantly smaller than the two expert panels would have been.

"This administration has made many changes to the composition of the CASAC and to the process for reviewing the NAAQS. Every one of these changes has made the process worse. This is just the latest example," Frey said.

In addition to the pool, Wheeler announced he'd selected Ronald Kendall, a professor of environmental toxicology at Texas Tech University, to fill an open seat on the main seven-member CASAC. Kendall replaces Timothy Lewis, who stepped down from CASAC this year after retiring from the Army Corps of Engineers.

Kendall was a member of EPA's Science Advisory Board from 1995 to 1999 then chaired it until 2002. His expertise is in wildlife toxicology and risk assessment.

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## **Inside EPA**

### **Justices Slate Arguments In Suit On CERCLA Pre-Enforcement Review Bar**

<https://insideepa.com/daily-news/justices-slate-arguments-suit-cercla-pre-enforcement-review-bar>

**By Suzanne Yohannan**

The Supreme Court is slated to hear arguments later this year in a landmark suit over the reach of the Superfund law's bar on pre-enforcement judicial review, a case in which the Trump administration is backing an oil company's effort to overturn a landmark Montana high court ruling that found the bar does not extend to state damages claims.

The court announced late last week that it will hear Dec. 3 oral arguments in the case, *Atlantic Richfield Company (ARCO) v. Gregory A. Christian, et al.*

The announcement comes after the Justice Department (DOJ), after initially opposing high court review of the suit on procedural grounds, late last month filed a brief reinforcing the oil company's arguments and charging that if the state

court ruling is allowed to stand, it will undermine cleanups across the country by requiring liable parties to undo some EPA-ordered remedies.

“Among other elements of relief, respondents [in the case] sought funds to conduct cleanup activities that were not part of the remedy EPA had selected under the [Comprehensive Environmental Response, Compensation & Liability Act (CERCLA)], and that would require undoing parts of that remedy,” the United States says in an Aug. 28 amicus brief.

“The Court’s decision whether to permit such claims to proceed will have a significant effect on the cleanup at this Superfund site and others throughout the country,” it says.

Montana’s high court ruled in 2017 to allow local landowners to proceed with their suit seeking damages under state law that will result in a stricter cleanup than the one EPA approved.

The case -- which the high court in June agreed to review -- could test whether the Superfund law’s bar on judicial review of ongoing cleanup remedies, found in CERCLA section 113(h), extends to state damages claims.

The case could also test two other unsuccessful defenses ARCO had pursued when arguing before the Montana court. Among these are that the landowners are potentially responsible parties (PRPs), and therefore, under CERCLA section 122(e)(6), should be barred from undertaking remedies different from those authorized by EPA.

Also, ARCO argues that the Montana court decision splits with other courts on applying conflict preemption in the CERCLA context.

While DOJ in an *amicus* brief filed last April at the court’s request, disagreed with the Montana court’s ruling, it urged the Supreme Court to reject ARCO’s petition for review, calling it “premature” and not ripe for review given the interlocutory nature of the case.

DOJ said the case’s interlocutory status “creates uncertainty” over the high court’s jurisdiction and could complicate a review on the merits. It also contended at the time that exercising jurisdiction over the case would require extending the rationale articulated in the Supreme Court’s 1976 ruling in *Fisher v. District Court*, which found that a “judgment that terminates original proceedings in a state appellate court, in which the only issue decided concerns the jurisdiction of a lower state court, is final.”

The government originally argued that only one of the issues decided by the Montana high court concerns the jurisdiction of a lower state court -- that dealing with the bar on pre-enforcement review of Superfund cleanups, section 113(h) under CERCLA. But the other two issues considered by the court did not, it pointed out.

### **Amicus Brief**

Nonetheless, the Supreme Court accepted the case, and, as an *amicus* party, the United States late last month filed a brief reiterating the same arguments ARCO makes for reversing the state court. The government also modifies its view on the high court’s jurisdiction over the case.

Now, on the jurisdiction issue, DOJ reasons that while the high court under *Fisher* exercised jurisdiction over a state high court decision that terminated original proceedings in a lower state court in which the only issue was lower state court jurisdiction, *Fisher* did not restrict such reviews to decisions exclusively resolving questions of lower state court jurisdiction.

Jurisdiction under section 1257 of the U.S. Code related to judicial procedures -- which allows Supreme Court review of certain state high court final decisions -- “turns on finality, and the Montana Supreme Court’s resolution of the nonjurisdictional issues in the original proceeding below was no less ‘[f]inal’ than its resolution of the jurisdictional question,” the government says.

Further, at a minimum, the high court has jurisdiction to review the state court’s decision on CERCLA section 113, which does concern jurisdiction of a lower state court.

The government’s merit arguments track ARCO’s. Specifically, the government notes that section 113(b) gives federal courts exclusive jurisdiction over CERCLA matters, except under section 113(h) where even federal courts cannot conduct pre-enforcement review challenges to EPA response actions. The government says that the Montana courts

therefore lacked jurisdiction over the restoration claims -- as these claims would contradict EPA's CERCLA remedy and therefore are challenges to EPA's response actions.

Next, the government says even if the state court had jurisdiction, the citizens' claims "should have been dismissed under principles of conflict preemption." The state court allows a state jury to award damages for cleanup actions that do not comport with CERCLA standards, it says. "The conflict with federal law is particularly apparent here," it says, because the claims seek work that would reverse parts of EPA's cleanup.

Finally, DOJ says the respondents cannot proceed with their claims as they are PRPs, given they are landowners within the site. And PRPs must obtain EPA authorization to undertake a cleanup, but here they have not, it says.

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## **Bloomberg Environment**

### **Lawsuit Threat Aims to Make EPA Release Chemical Documents**

<https://news.bloombergenvironment.com/environment-and-energy/lawsuit-threat-aims-to-make-epa-release-chemical-documents>

**By Pat Rizzuto**

- Hundreds of new chemical studies allegedly not made public by EPA
- Environmental, labor groups claim law requires release of information

The EPA routinely fails to disclose many new chemical documents it is required to make public under the Toxic Substances Control Act, environmental and worker advocates charge.

And the agency illegally delays its release of those documents it does disclose, six nonprofit groups charged in an "intent to sue" [letter](#) sent to EPA Administrator Andrew Wheeler.

The citizen's suit provisions in the chemical statute give the Environmental Protection Agency 60 days to address the alleged violations before a lawsuit can be filed. The letter is dated Sept. 3; that means a lawsuit could be filed as early as Nov. 4.

The 61-page letter describes hundreds of times that different types of information, such as health and safety studies about new chemicals, were not made public despite the legal mandate to do so, according to the coalition.

The EPA did not immediately reply to a request for comment Sept. 16.

The letter was sent by the Environmental Defense Fund, Center for Environmental Health, Environmental Health Strategy Center, the Natural Resources Defense Council, Sierra Club, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial Service Workers International Union, AFL-CIO/CLC.

The Sierra Club has received funding from Bloomberg Philanthropies, the charitable organization founded by Michael Bloomberg. Bloomberg Environment is operated by entities controlled by Michael Bloomberg.

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## **High Plains Journal**

### **EPA won't approve labels calling glyphosate 'carcinogenic'**

[https://www.hpi.com/crops/epa-won-t-approve-labels-calling-glyphosate-carcinogenic/article\\_07944773-4b21-52db-8adf-3554e3851bd7.html](https://www.hpi.com/crops/epa-won-t-approve-labels-calling-glyphosate-carcinogenic/article_07944773-4b21-52db-8adf-3554e3851bd7.html)

**By David Murray**

The Environmental Protection Agency said Aug. 8 that it will no longer approve any labels to products that contain glyphosate that warn that the weed killer causes cancer.

“EPA is issuing guidance to registrants of glyphosate to ensure clarity on labeling of the chemical on their products. EPA will no longer approve product labels claiming glyphosate is known to cause cancer—a false claim that does not meet the labeling requirements of the Federal Insecticide, Fungicide, and Rodenticide Act),” according to a press release on the EPA’s website.

The move is a direct response to California, which wants to add the warning to labels. It has been unable to do so because a court order obtained by Bayer, formerly Monsanto, the maker of Roundup, halted the state effort until lawsuits against Bayer over the chemical are resolved. So far, juries have awarded damages in three cases against Bayer to plaintiffs alleging injuries because of Roundup.

The EPA statement continues, “The State of California’s much criticized Proposition 65 has led to misleading labeling requirements for products, like glyphosate, because it misinforms the public about the risks they are facing. This action will ensure consumers have correct information and is based on EPA’s comprehensive evaluation of glyphosate.”

EPA has consistently maintained that glyphosate is not a carcinogen, and that saying it is in a label would constitute a false and misleading statement, prohibited by federal law.

Products containing glyphosate are widely used for weed control in the production of many crops including corn, cotton, canola, soybean, sugar beet, oilseed crops, and sugarcane.

“If we are going to feed 10 billion people by 2050, we are going to need all the tools at our disposal, which includes the use of glyphosate,” said U.S. Secretary of Agriculture Sonny Perdue.

“USDA applauds EPA’s proposed registration decision as it is science-based and consistent with the findings of other regulatory authorities that glyphosate does not pose a carcinogenic hazard to humans.”

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## **E&E News**

### **Decisive week for energy and environment spending**

<https://www.eenews.net/eedaily/stories/1061123395/>

[George Cahlink](#) and [Jeremy Dillon](#), E&E News reporters

Congress will move spending legislation on multiple fronts this week, possibly including the Energy and Water Development bill in the Senate and a stopgap measure in the House.

Lawmakers are pressing to pass fiscal 2020 spending bills before the new fiscal year begins Oct. 1 amid partisan splits over funding levels and policy riders.

Leaders in both chambers, though, say they will avert a shutdown in the new year by moving a temporary funding measure. The House is set to act on one this week.

The Senate is tentatively set for a procedural vote that would allow it to consider its first fiscal 2020 bills — the Energy-Water and Defense measures — in one package. Sixty votes would be needed to advance the bill, meaning Democrats could filibuster it.

Senate appropriators approved both measures last week, but only the Energy-Water bill had bipartisan support. Democrats opposed the Defense measure because it would help fund President Trump’s \$5 billion border wall.

Senate appropriators are set to mark up three more fiscal 2020 bills in subcommittee this week, with a full committee markup likely Thursday. Those bills are:

- A \$74.3 billion Transportation-Housing and Urban Development bill, which would be 2% lower than the House version.
- A \$24.2 billion Financial Services-General Government bill, which would be 3% lower than the House version.
- A \$23.1 billion Agriculture bill, which would be 5% below the House version.

Two other bills, the State-Foreign Operations and Labor-Health and Human Services-Education measures, were delayed last week by Senate appropriators in a dispute over abortion riders. They have yet to be rescheduled.

The Senate Appropriations Committee is expected to release and vote on the Interior-EPA and Commerce-Justice-Science bills next week.

While Senate appropriators have only moved two bills so far, the House has passed 10 of its 12 spending bills, the Interior-EPA and Energy-Water measures included.

Ultimately, Congress is expected to work much of this fall on cobbling together an omnibus spending package containing any of the fiscal 2020 bills not signed into law by Oct. 1.

### **Climate bill by another name**

If the Senate passes Energy-Water, it would be one of the most significant measures related to climate change to pass the chamber this Congress.

That's largely because of the bill's massive clean energy research and development spending allocation, an innovation agenda that many lawmakers and advocates have seen as critical to addressing carbon emissions from the power sector.

The Senate legislation includes more spending for clean energy research and development than what even House Democrats offered in their version.

Leading the Senate charge is a \$2.9 billion proposal for the Energy Department's Office of Energy Efficiency and Renewable Energy, a \$479 million increase compared with fiscal 2019 enacted levels. The proposal also is \$200 million more than the \$2.7 billion set aside by House Democrats for the same program.

"Look at the EERE budget. ... Ba-boom," said Sen. Lisa Murkowski (R-Alaska), chairwoman of the Energy and Natural Resources Committee and a top appropriator. "This is significant in terms of the research side, and this is clearly reflective of Secretary [Rick] Perry's initiative and all the folks at DOE."

"It lines up neatly with what [Energy and Water Development Appropriations Subcommittee] Chairman [Lamar] Alexander [R-Tenn.] has been pushing with his 'Manhattan Project,' so that was significant," she added.

In addition to EERE, the Senate's proposal would give record funding for DOE's Advanced Research Projects Agency-Energy at \$428 million, \$3 million more than proposed by House Democrats, and the Office of Science at \$7.3 billion, \$400 million more than the House's \$6.9 billion level.

"I'm particularly pleased that this bill takes climate change seriously and makes significant investments to combat it," said Energy and Water Development ranking member Dianne Feinstein (D-Calif.).

"It includes the highest funding levels ever for the Office of Science and Office of Energy Efficiency and Renewable Energy, which are key to reducing our dependency on fossil fuels."

### **Yucca's last ride?**

Senate floor consideration of the Energy-Water bill may also provide Yucca Mountain supporters one last chance to attach funding for the shuttered facility. Nevada Democrats, however, stand as a roadblock.

Alexander had expressed a desire for a floor vote on Yucca's viability as a temperature check on the chamber's interest in reviving a facility the Obama administration abandoned in 2010.

But with both chambers aligning for the first time on the same strategy for nuclear waste management through interim storage, an amendment vote is looking less likely.

"We'll see," Alexander told reporters after the markup last week. "At least we are moving ahead with the interim storage proposal that has been included in our bill for several years. Right now, it's difficult to get Yucca Mountain on the floor because of the opposition from the Democratic senators from Nevada."

Alexander, Murkowski and Feinstein have legislation, [S. 1234](#), to authorize interim storage along with a search for a second site — not Yucca — for a permanent repository.

That legislation, along with the House and Senate funding bills, would make it appear that interim storage has taken most of the waste management momentum away from Yucca Mountain, although that's not the takeaway sponsors are saying.

"I don't think so," Murkowski said in response to whether this would effectively kill the Yucca Mountain project.

"What I have said is what we are proposing with this interim storage, this is not an either-or proposition with Yucca," she continued. "What we are saying, the authorizers and the appropriations, is we have to get moving on something, so let's get moving on this interim piece."

**Schedule:** The Transportation and Housing and Urban Development Subcommittee markup is Tuesday, Sept. 17, at 11:30 a.m. in 192 Dirksen.

**Schedule:** The Financial Services and General Government Subcommittee markup is Tuesday, Sept. 17, at 2:15 p.m. in 124 Dirksen.

**Schedule:** The Agriculture, Rural Development, and Food and Drug Administration Subcommittee markup is Tuesday, Sept. 17, at 3 p.m. in 192 Dirksen.

**Schedule:** The full committee markup is Thursday, Sept. 19, at 10:30 a.m. in 106 Dirksen.

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## **E&E News**

### **Democrats to question EPA official over WOTUS rulemaking**

<https://www.eenews.net/eedaily/stories/1061116563/>

[Ariel Wittenberg](#), E&E News reporter

David Ross, head of EPA's water office, will appear before a House Transportation and Infrastructure subcommittee Wednesday to discuss the administration's rollback of Clean Water Act protections.

Last week, EPA and the Army Corps of Engineers finalized their repeal of the Obama-era Clean Water Rule, which sought to clarify which wetlands and streams were protected as "waters of the U.S.," or WOTUS, under the Clean Water Act.

The Trump administration has also vowed to further roll back protections that have been in place since the 1980s in an action EPA plans to finalize this winter.

Energy and Commerce Chairman Peter DeFazio (D-Ore.) and Grace Napolitano (D-Calif.), who chairs the Subcommittee on Water Resources and Environment, released a [report](#) Thursday outlining "how actions of the Trump EPA hasten the return of polluted rivers, lakes and streams."

The repeal and rewrite top a list of five actions, which also include cutting funding for sewage treatment upgrades and sluggish enforcement statistics. Democrats this week are sure to ask Ross and other witnesses about all five issues listed in the report.

On the other side of the aisle, full committee ranking member Sam Graves (R-Mo.) and subcommittee ranking member Bruce Westerman (R-Ark.) both spoke Thursday at the repeal signing ceremony.

This will be the second congressional hearing in recent months on the administration's efforts to limit which wetlands and waterways are protected by the Clean Water Act.



This summer, members of the Senate Environment and Public Works Committee appeared confused over basic concepts of Clean Water Act jurisdiction.

Republicans tried to argue that the Clean Water Act could protect waters that are not considered "waters of the United States" (*E&E Daily*, June 13).

That's an argument both EPA Administrator Andrew Wheeler and Office of Water Deputy Assistant Administrator Lee Forsgren also made last week (*E&E News PM*, Sept. 12).

In fact, the Clean Water Act itself says it applies to "navigable waters of the United States," which it defines as "waters of the United States." Any waterways that are not included in a new WOTUS definition would not be subject to federal permitting programs.

If a waterway or wetland is not included in a WOTUS definition, it means polluters could discharge sewage into a waterway, for example, without needing to treat it, or developers could destroy wetlands without offsetting impacts.

The Clean Water Act does authorize a number of funding programs that states can choose to use to protect other waters, but federal regulations are limited to waterways included in a WOTUS definition.

It remains to be seen whether Ross will repeat those talking points made by his boss, Wheeler, and his deputy, Forsgren.

Separately, the EPW Committee will hold a hearing on how water resources infrastructure can help improve "American economic competitiveness."

The hearing Wednesday is meant to highlight the importance of Congress passing a water infrastructure authorization bill in 2020.

Congress has passed such reauthorization bills roughly every two years since 2014. Before that, the legislation was considered irregularly. Advocates are likely to press for continuing the recent reauthorization schedule.

**Schedule:** The House hearing is Wednesday, Sept. 18, at 10 a.m. in 2167 Rayburn.

**Witnesses:**

- David Ross, assistant administrator, EPA Office of Water.
- Maia Bellon, director, Washington Department of Ecology.
- Becky Keogh, secretary, Arkansas Department of Energy and Environment.
- Michael Hickey, resident, Hoosick Falls, N.Y.
- Pam Nixon, president, People Concerned about Chemical Safety.
- Geoffrey Gisler, senior attorney, Southern Environmental Law Center.

**Schedule:** The Senate hearing is Wednesday, Sept. 18, at 10 a.m. in 406 Dirksen.

**Witnesses:**

- Pat O'Toole, president, Family Farm Alliance.
- Jamey Sanders, vice president, Choctaw Transportation Co.
- Derek Brockbank, executive director, American Shore & Beach Preservation Association.

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**E&E News**

**Science panel to review emissions reduction efforts**

<https://www.eenews.net/eedaily/stories/1061121961/>

**Maxine Joselow, E&E News reporter**

House lawmakers will explore ways of reducing planet-warming emissions from cars and trucks this week.

The House Science, Space and Technology Subcommittee on Energy will convene Wednesday for a hearing titled "The Next Mile: Pathways to Accelerate Sustainability Within the Transportation Sector."

The hearing comes after transportation surpassed the power sector as the country's largest source of greenhouse gas emissions. Cars and trucks account for the bulk of those emissions, according to EPA [data](#).

Under the past leadership of former Chairman Lamar Smith (R-Texas), the Science panel served as a forum for questioning the scientific consensus on climate change and assailing the Obama administration's environmental regulations.

Now that Rep. Eddie Bernice Johnson (D-Texas) helms the panel, however, the hearing will likely serve as an opportunity for lawmakers and witnesses to tout an array of low-carbon technologies, including electric vehicles, hydrogen fuel cells and biofuels.

In addition to Johnson, a lawmaker to watch is freshman Rep. Haley Stevens (D-Mich.), who was appointed by President Obama to serve as chief of staff for his Presidential Task Force on the Auto Industry ([E&E Daily](#), Feb. 7).

**Schedule:** The hearing is Wednesday, Sept. 18, at 2 p.m. in 2318 Rayburn.

**Witnesses:**

- James Chen, vice president of public policy, Rivian Automotive LLC.
- Ann Schlenker, director, Center for Transportation Research, Argonne National Laboratory.
- Brooke Coleman, executive director, Advanced Biofuels Business Council.
- Claus Daniel, director, Sustainable Transportation Program, Oak Ridge National Laboratory.
- Tim Cortes, vice president, hydrogen energy systems, Plug Power Inc.

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**E&E News**

**Wheeler faces grilling on agency's use of science**

<https://www.eenews.net/eedaily/stories/1061123221/>

**Sean Reilly, E&E News reporter**

EPA Administrator Andrew Wheeler is — for the first time — likely this week to face sustained congressional questioning on his agency's handling of science.

There will be plenty to discuss.

The hearing, set for Thursday morning before the House Science, Space and Technology Committee, is ostensibly on the subject of "science and technology" at EPA. But its goals extend well beyond that boilerplate description, according to a spokeswoman for Chairwoman Eddie Bernice Johnson (D-Texas).

"Agency-wide policies and practices related to the development and use of science in regulatory and deregulatory decisions; the role of independent scientific advisory bodies such as the EPA Science Advisory Board and the EPA Clean Air Scientific Advisory Committee; and the importance of transparency and integrity in the agency's science activities" could all come up, spokeswoman Rebekah Eskandani indicated in an email late last week.

EPA press staffers did not respond to a request for an overview of the points Wheeler intends to raise in his prepared testimony.

From the perspective of committee Republicans, the hearing is a "pretty straightforward" review of EPA programs and budgets within the panel's jurisdiction similar to those already conducted for NOAA and other agencies, Heather Vaughan, a spokeswoman for ranking member Frank Lucas (R-Okla.), said in a separate message.

But the Trump administration's approach to science at EPA has triggered accusations that political appointees are attempting to smother evidence of the need for stronger regulations to protect public health and the environment.

Last year, for example, then-Administrator Scott Pruitt unveiled a draft rule that would bar the agency from tapping scientific studies for regulatory purposes unless the underlying data is available for "independent validation."

After a pause following Pruitt's forced resignation in July 2018, Wheeler now wants to issue the final version by December. While Pruitt described the proposal's purpose as bolstering public confidence in EPA's decisionmaking, critics see it as a ruse intended to stymie the use of potentially important research.

Earlier in his tenure, Pruitt had imposed a new membership policy for EPA advisory committees that helped lead to unusually high turnover at panels such as the Science Advisory Board.

"Largely, we're looking at all the awful things Scott Pruitt did and seeing which ones Wheeler has reversed and which ones he's doubled down on," Rep. Don Beyer (D-Va.), another Science Committee member, said in a brief interview last week. Those include "suppression" of evidence of climate change, Beyer added.

Thursday's hearing will mark Wheeler's first appearance before the committee. While he has faced questions on EPA's use of science at hearings before other panels, they have typically arisen tangentially.

### **Additional concerns**

Other topics that could arise are outlined in a series of letters to Wheeler from Johnson and other top committee members in recent months. In July, for example, Johnson accused EPA of stonewalling an investigation into why the agency has blocked the release of an assessment of the perils posed by formaldehyde, a commonly used chemical ([E&E News PM](#), July 19).

In June, she and other lawmakers again asked Wheeler for documents that might help explain why EPA and Texas regulators declined NASA's offer of air monitoring assistance after Hurricane Harvey struck the Houston area in 2017.

And in May, she asked the EPA chief to reinstate an auxiliary panel of experts that had been helping the agency's Clean Air Scientific Advisory Committee (CASAC) in its latest review of the National Ambient Air Quality Standards for particulate matter ([E&E Daily](#), May 16).

Wheeler fired that panel last October in what he later described as a streamlining move. While some CASAC members also wanted the panel reconstituted, Wheeler on Friday instead named a dozen consultants to aid the committee upon request ([E&E News PM](#), Sept. 13).

"There is a good chance that any number of issues that the chairwoman has raised this Congress will be addressed in the hearing," Eskandani said last week.

**Schedule:** The hearing is Thursday, Sept. 19, at 10 a.m. in 2318 Rayburn.

**Witness:** EPA Administrator Andrew Wheeler.

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### **Politico**

**Trump weighs ethanol boost, limit to refiner exemptions from biofuel rule, sources say**

**BY ERIC WOLFF**

The White House is considering a plan that could limit the number of small refinery exemptions to the Renewable Fuel Standard, increase the volumes of biofuels that must be blended into gasoline and boost the spread of 15 percent ethanol fuels, four industry and other sources familiar with discussions tell POLITICO.

The sources cautioned that the details of the plan aimed at easing tensions with corn farmers are still under discussion and could change before they are publicly released, which had been expected as early as Friday but is now expected next week.

The biggest win for biofuel producers would be a limit on the number of exemptions EPA grants to small refiners from blending mandates under the RFS. Though the exact details are still being ironed out, but the ethanol volumes exempted from the program would be limited to the average from the previous three years. That would prevent EPA from hiking those exemptions to wipe out increases it sets in the annual blending mandates, sources said, and make the program more predictable for markets, they said.

The deal under consideration would also include the previously reported addition of 500 million gallons of ethanol and 500 million gallons of advanced biofuels to the 2020 blending mandate currently under review at the White House. It will also add 250 million gallons to the 2021 biodiesel mandate, which is set a year ahead of the other volumes.

The plan would allow gas stations to use their normal E10 pumps to sell 15 percent ethanol fuel, another victory for biofuels producers because it would save retailers from having to install new equipment to sell the higher blend. EPA earlier this year proposed eliminating the summertime ban on selling E15.

A group of senators from refining states, including Sens. Ted Cruz (R-Texas) and Pat Toomey (R-Penn.) had been expected to meet with President Donald Trump Friday, but one of the sources said that meeting was postponed to next week. The senators are expected to press Trump to put a cap on the price of compliance credits, called Renewable Identification Numbers, though some sources said the White House was opposed to that move.

Trump has been pushing to develop a package that would mollify farmers already battered by his trade war with China and angered by his decision this summer to exempt 31 refiners from the biofuel mandates.

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## **Reuters**

### **Trump backs plan that would boost biofuel quotas 10% in 2020**

<https://www.reuters.com/article/us-usa-biofuels/trump-backs-plan-that-would-boost-biofuel-quotas-10-in-2020-idUSKBN1W11KG>

Jarrett Renshaw, Stephanie Kelly

The plan is intended to address a major source of anger in U.S. farm country as Trump seeks to hold favor in the Midwest ahead of next year's election, but it is likely to upset the oil industry, another important political constituency, underscoring the pitfalls of U.S. biofuel policy.

Under the plan, the U.S. EPA will calculate a three-year rolling average of total biofuels gallons exempted from the mandates under its Small Refinery Exemption program and add that figure to its annual biofuel blending quotas each year, the sources said. For 2020, that figure would be 1.35 billion gallons, according to a Reuters calculation.

That would come in addition to a tentative agreement to boost next year's blending volumes by 1 billion gallons, including 500 million gallons for conventional biofuels like corn-based ethanol and 500 million gallons for advanced biofuels like biodiesel, the sources said.

A court in 2016 ruled that the Obama administration illegally lowered the mandate by 500 million gallons, and part of the current proposed addition would satisfy the decision.

As a result, if the Trump administration followed through on the plan, next year's total blending mandate would come out to about 22.4 billion gallons, from just over 20 billion in the EPA's current proposal, according to the Reuters calculation.

The EPA has until the end of November to finalize its 2020 biofuel volumes mandates.

Under the Renewable Fuel Standard, oil refiners are required to blend increasing volumes of biofuels like corn-based ethanol into their fuel each year, to help farmers and reduce imports, but small refining facilities in financial straits can seek waivers.

Trump inserted himself into negotiations between the rival oil and corn industries after his administration recently granted 31 oil refiners exemptions to their blending requirements, infuriating corn farmers and ethanol producers who say the program undermines demand for ethanol at a time the industry is already suffering from a loss of foreign markets.

He and senior administration officials have held a series of meetings with biofuel company officials, chief executives from Marathon Petroleum Corp and Valero Energy Corp, and lawmakers from key farm states including the Republican senators Joni Ernst and Chuck Grassley.

Trump was expected to meet with senators representing oil-producing states on Monday to continue discussions on the issue, sources said.

It was unclear if Trump would secure the backing of the oil industry for the plan without granting it any concessions.

One idea that Trump discussed during the meeting with Marathon and Valero last week to help refiners was to potentially cap the price of blending credits refiners must earn or purchase to comply with the RFS, sources familiar with the matter said.

Senators including Pennsylvania's Pat Toomey and Texas's Ted Cruz sent a letter to Trump on Thursday, asking any increase to biofuel volumes be accompanied by safeguards against higher credit prices.

*Reporting by Jarrett Renshaw and Stephanie Kelly; editing by Richard Valdmanis and Nick Zieminski*

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## **Greenwire**

### **Trump ally pushes permit for genetically altered mosquito**

<https://www.eenews.net/greenwire/stories/1061126099/>

[Ariana Figueroa](#), E&E News reporter

EPA is evaluating an experimental permit — backed by a company with ties to a top Trump fundraiser — involving the release of genetically engineered mosquitoes.

The review, which EPA opened on Sept. 11 for public comment, draws into question the political influence leveraged to facilitate a high-level meeting with EPA's administrator in an effort to push the application forward.

The [application](#) was put forth by Oxitec, a British biotech company that is bankrolled by multiple investors including the Bill and Melinda Gates Foundation and is a holding company of Intrexon Corp.

Freedom of Information Act [documents](#) obtained by E&E News show lobbyist and Trump fundraiser Roy Bailey and billionaire and CEO of Intrexon Randal Kirk were scheduled to meet with former EPA Administrator Scott Pruitt on May 18, 2017, to discuss the application.

Kirk is a former attorney who made his money as an investor in pharmaceuticals and biotechnology. Bailey is a Texas financial executive who raises funds for America First Action, a super political action committee comprised of former aides to President Trump.

The nonprofit arm of the organization, America First Policies, is dedicated to supporting Trump's agenda. America First raised \$39 million from 2017 through 2018, according to Federal Election Commission files.

Meredith Fensom, Intrexon's head of global policy and governmental affairs, said Bailey set up the meeting for Kirk, who needed help transferring review of his biotech application between federal agencies. Fensom also noted that Bailey and Kirk are good friends.

Initially, the company's plan for genetically altered mosquitoes was being reviewed by the Food and Drug Administration, but in January of 2017, the agency decided it should be reviewed by EPA, Fensom said.

"So for us it was important, that transfer," she said, noting that it was during a Zika virus outbreak in the U.S. Nearly five months went by, but the transfer was not complete, she added.

In May 2017, Bailey facilitated the meeting with Pruitt and Kirk, Fensom said. After that meeting, it took nearly another five months for the transfer to EPA to be complete.

"We didn't get special treatment because it took 10 months to get that transfer," she said. "Think back to the timing; this was during a real Zika outbreak."

As to Bailey's relationship with Pruitt and how he facilitated the meeting, Fensom said she did not know.

Bailey did not respond to multiple requests for comment.

Lobbying records show that Bailey first registered as a lobbyist for Intrexon in October 2017, five months after the May meeting. The company spent \$140,000 for Bailey's lobbying firm to advocate on behalf of Intrexon from 2018 to the second quarter of 2019, the most recent filings show.

Bailey was a board member on the super PAC at the time of the meeting.

For the next two years, representatives from Oxitec had meetings scheduled with EPA about genetically altered mosquitoes to reduce populations, according to FOIAs obtained through a Sierra Club lawsuit.

"Intrexon is a leading life science company and they have the genetically engineered mosquito technology which can eradicate Zika virus and other viruses associated with mosquito bites, [OxiTec], their technology will fall under the purview of the EPA," the subject line of the May 18 meeting reads.

EPA spokesman Michael Abboud said, "EPA met with Oxitec to discuss ways to combat the spread of Zika virus during 2017."

The permit would allow Oxitec to release male genetically altered mosquitoes into Harris County in Texas and Monroe County in Florida to mate with female mosquitoes, which bite people and animals.

The modified male mosquitoes would cause the female offspring to die, meaning only the male offspring would survive to adulthood. That next generation of male mosquitoes would have the same genetic modification as those initially released by Oxitec.

Oxitec intends to target one mosquito species in the Florida Keys called *Aedes aegypti*.

University of Florida professor Nathan Burkett-Cadena said the *Aedes aegypti* mosquito is not native to the U.S. and is often referred to as the "yellow fever" mosquito.

Burkett-Cadena, who studies how diseases spread from mosquitoes and other blood-feeding arthropods to people and animals, said *Aedes aegypti* can spread include Zika, chikungunya and dengue viruses.

EPA said if the experiment is approved, it will take more than two years to complete

Public comments on the proposal are due Oct. 11, according to EPA.

Reporters Kevin Bogardus and Corbin Hiar contributed.

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## Roll Call

### As states legalize marijuana, pesticides may be a blind spot

<http://www.rollcall.com/news/as-states-legalize-marijuana-pesticides-may-be-a-blind-spot>

[Jacob Holzman](#)

The EPA would ordinarily evaluate pesticide safety, but it has never done so for marijuana because the plant is illegal under federal law. (Bill Clark/CQ Roll Call)

People who consume marijuana medically or recreationally may be exposing themselves to unknown health risks from toxic pesticides.

The EPA would ordinarily evaluate pesticide safety but has never done so for marijuana because the plant is illegal under federal law. So, states with legalized marijuana industries have been tasking newly created cannabis regulators, health officials and others with setting testing standards for pesticide residues present on the plant.

Now, state pesticide officials, who normally assure that EPA guidance is followed, as well as former career EPA staff, academics and environmental groups, say that without the federal guidance, marijuana users could be exposed to unknown harms.

“Frankly, we don’t know,” said Rose Kachadoorian, president of the Association of American Pesticide Control Officials and pesticide program manager for the Oregon Department of Agriculture. “We don’t have the data. That’s why you have to have pesticide regulators step back and find out what might be a level that is not constituting risk.”

The federal government should be doing more to make it clear that these standards, sometimes referred to as “action levels,” may not be protective and ask states to convey that information to the public, they say.

“If you talk to any pesticide regulator and they would look at those action levels ... I don’t think you would find one person that thinks they would be protective of public health,” Kachadoorian said.

Whether marijuana products are safe for consumption has become a national concern, as federal regulators investigate whether a recent outbreak of lung disease tied to vaping of THC — the psychoactive chemical in marijuana — is being caused by contaminants.

The industry, transitioning from operating in the shadows toward various stages of legality across the U.S., says that growers go to great lengths to protect consumers.

Morgan Fox, a spokesman for the National Cannabis Industry Association, said in a Sept. 4 email that his group hasn’t seen “any data suggesting that existing pesticide regulations are creating any widespread public health issues after years of regulated markets existing in a number of states.”

“States are doing their best to implement strict rules for pesticide use and make sure that licensed cultivators are abiding by them,” Fox said. “There is also an increasing drive among cultivators to avoid pesticides where possible.”

But the state pesticide officials and others say it’s concerning that other state regulators are setting quality standards without sufficient health data. Jon Jacobs, a former career EPA attorney who worked in the agency’s criminal enforcement division and recently started a cannabis industry consulting firm, said illicit growers likely used “massive amounts of pesticides to grow their illegal cannabis crops, but because it was black market, nobody was paying attention.”

Use of these pesticides probably continues with little oversight, he said.

“No one’s going to pay attention until we start having more consumers injured, either through smoking or ingestion or dermal exposure,” Jacobs said.

### **Multiple paths**

Like any other agricultural sector, the marijuana industry has to deal with mold, insects and other pests. Pesticides are a common tool used by farmers to address that issue, but products commonly used in commercial agriculture can be toxic if consumed in certain amounts and there is little study on what amount, if any, can be present on marijuana products without harming consumers.

Part of the issue is that marijuana is consumed in many ways. Users ingest concentrated edibles, apply topical creams or heat and inhale it in smoke or vapor form. And the EPA has little experience studying the impact of pesticides on health when consumed in these myriad methods.

“We see there is a giant gaping hole inside of what we would all need to know for setting action limits,” said Jeffrey C. Raber, former executive director of the Association of Commercial Cannabis Labs and current operator of a marijuana research firm based in California. “If I’m going to use it for inhalation, that bypasses the liver, goes straight into my bloodstream ... I’ve got very different toxicological concerns.”

“EPA would have to add a whole lot of new exposure scenarios in order to figure out the best ways to assess the risks of potential exposures,” said Tina Levine, who previously managed the health effects division within the EPA’s Office of Pesticide Programs.

“Many states don’t have a very developed pesticide infrastructure within their government, and they rely on EPA. In this case, since the federal EPA doesn’t have a role, they can’t do that,” she said.

In the EPA’s absence, state pesticide officials have tried to educate the industry and the public that no pesticide is legal to use on marijuana. Some have released lists of products that are generally low risk and that EPA has approved for a broad range of uses.

### **Setting standards**

But in states like Oregon, Colorado, California, Nevada, Washington and others, agencies that don’t typically regulate pesticides are setting standards for labs that test marijuana for contaminants. Pesticide regulators like Kachadoorian say that some of those pesticides may be unsafe at any level.

“We’re concerned about these levels, that there would be something termed ‘action level’ and how it might be misconstrued,” Kachadoorian said.

Those regulators, as well as industry groups, say these standards are an improvement from having black-market products without any testing at all.

Brian Smith, a spokesman for the Washington State Liquor and Cannabis Board, which regulates the state’s marijuana industry, said “anyone that’s been in the industry ... can tell you that marijuana’s been lathered in pesticides for decades.”

Smith said approving pesticides for growers without help from the federal government has been a major challenge for the agency.

“Doing something that is illegal at the federal level and not having the kind of support that the EPA would provide on something like this has been very challenging,” he said.

State pesticide officials recently elevated their concerns to EPA’s leadership. An EPA-funded working group overseen by the Association of American Pesticide Control Officials, sent a letter in July stating that tolerable pesticide residues were being set higher than what was allowable on other crops, with little input from the state agencies experienced in pesticides.

Though the standards were not designed to give growers permission to use pesticides illegally, they were being misinterpreted as such, creating a potential threat to consumers. The EPA should tell states they’re setting testing



standards in conflict with federal pesticide law and should put pesticide regulators fully in charge of regulating the chemicals' use on agriculture, the group said.

An EPA spokesman declined to comment on the letter. While the agency recently began the process of approving pesticides for use on hemp, a crop derived from the same plant as marijuana but with virtually no THC, spokesman Robert Daguiard said in an Aug. 21 email the agency's policy on marijuana hasn't changed.

"Marijuana remains subject to the Controlled Substances Act," he wrote. "EPA is not offering a list of pesticides for use on marijuana."

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## **Greenwire**

### **Wheeler picks director of Science Advisory Board staff**

<https://www.eenews.net/greenwire/stories/1061126055/>

[Kevin Bogardus](#), **E&E News reporter**

EPA Administrator Andrew Wheeler announced Brennan's appointment in an [internal email](#) obtained by E&E News. Brennan's elevation to the leadership post, which he has held on an acting basis since February last year, comes as Wheeler is set to go before the House Science, Space and Technology Committee later this week to be questioned over EPA's use of science.

"Please join me in congratulating Tom as he continues to provide important leadership in the SABSO," Wheeler said in the email sent today to EPA employees.

An EPA spokeswoman said Wheeler was pleased to name Brennan to the post.

"Tom brings a wealth of experience and talent to the position, and the Administrator, and EPA leadership look forward to working with him in this very important role," said the spokeswoman.

Brennan is a longtime EPA employee, having joined the agency in 1997, according to his LinkedIn profile. He has served in the Office of Chemical Safety and Pollution Prevention as a risk assessor, team leader and branch chief. He also held positions in the administrator's office, including deputy director for the Science Advisory Board Staff Office and chief of staff for the Office of Public Engagement and Environmental Education.

Brennan began his career working for consulting firms in Washington, D.C. He has Bachelor of Science and Master of Science degrees in botany and plant biology from Ohio University.

The Science Advisory Board has been at the center of some of the Trump EPA's more controversial moves on science.

Staff for the science board advised its members of a new policy instituted by former EPA Administrator Scott Pruitt in 2017 that barred advisers who had received EPA grants from serving on such agency panels. That policy has been challenged by litigation and fallen under congressional scrutiny.

Wheeler also last year fired a panel of experts helping the Clean Air Scientific Advisory Committee in its review of particulate matter standards, which he has since replaced with consultants. That advisory committee is also administered by the Science Advisory Board Staff Office.

Wheeler will likely face questions from lawmakers over both during his first appearance as EPA administrator before the House Science panel on Thursday ([E&E Daily](#), Sept. 16).

Chris Zarba was the prior director for the Science Advisory Board Staff Office. He retired from EPA in February 2018 and has become a vocal critic of the Trump administration ([Greenwire](#), Jan. 10, 2018).

Brennan, who was deputy director of the science board's staff office under Zarba for part of his tenure, was named acting director after Zarba's retirement from EPA.

Cleveland.com

(Opinion) With this EPA, clean water might be harder to come by

<https://www.cleveland.com/opinion/2019/09/with-this-epa-clean-water-might-be-harder-to-come-by.html>

By [Jarvis DeBerry](#)

One of the sad and frustrating consequences of making progress on a worrisome problem is that the progress might leave some people unaware of how bad the problem actually was. And that ignorance allows the problem to get worse all over again. We've seen this time and again. One of the reasons that we're dealing with measles in the 21st century seems to be our earlier success at virtually eradicating the disease. Because seeing children suffer measles-related brain damage, hearing loss or deafness has become unheard of, some parents may not know how bad measles can be. Thus, they opt out of vaccinations and measles cases spike.

In 2013 the U.S. Supreme Court weakened the Voting Rights Act, which prohibited racial discrimination at the ballot box. Chief Justice John Roberts made the curious argument that the America of 2013 differed greatly from the America of 1965, that is, that there was no longer significant discrimination blocking anybody from voting. Roberts' observation ignored the reality that the 1965 legislation was a main reason for that difference and that its success was a reason to protect the law, not weaken it. Now, once again, we're seeing voting rights activists fight voter suppression efforts all over the country.

Has the Clean Water Act, which passed after the last Cuyahoga River fire, prompted the public into a similar kind of amnesia? Flint, Mich., notwithstanding, has our general success at cleaning up the water left America in the dark about how dirty the water can get?

The Environmental Protection Agency, which under this administration has become an industry protection agency, [repealed a 2015 rule](#) that gave the federal government the authority to protect streams and wetlands that feed into lakes and rivers that are often the sources of drinking water and thus already under the protection of 1970's Clean Water Act. News reports at the time the rule was imposed called it "controversial" because so many farmers and industry leaders were opposed to it.

Ohio's John Boehner, then the speaker of the House, in a statement, called the rule a "[raw and tyrannical power grab that will crush jobs](#)." He said it was "being shoved down the throats of hardworking people with no input" and put "landowners, small businesses, farmers, and manufacturers on the road to a regulatory and economic hell."

### No input?

The Ohio Environmental Council, in [a Thursday statement](#) criticizing the repeal of the Clean Water Rule, says that the rule was implemented after "more than 400 stakeholder meetings and more than a million public comments." The EPA said then that the agency had consulted "more than 1,200 peer-reviewed, published scientific studies" validating its eventual position that protecting streams and swamps plays a big part in protecting the lakes and rivers to which they connect.

Peter Bucher, water resources director of the Ohio Environmental Council, said in a Friday interview that repealing the 2015 rule returns us to the confusion the rule was meant to clean up.

It was hard figuring out what was and wasn't covered under the Clean Water Act, and the 2015 rule "was the best thing we had had to provide that clarity." The repeal of the rule, he said, gives individual states more authority to define what constitutes a waterway and, thus, what's worthy of protection.

Ohio Farm Bureau is one of the many organizations that supported removing the 2015 rule. The state group [holds the position of its umbrella organization](#), the American Farm Bureau Federation, that any rule regarding waterways ought to reflect "a balance between the federal and state governing authorities and (be) one that our members can embrace."

But giving more power to the states, Bucher said, is “problematic.” Why? Because “waterways don’t follow state boundaries.” One state’s decision to impose fewer regulations, he said, could have an impact **on** residents of states downstream. “A national safeguard standard is a much better route,” he said, and, “it’s backed up by science.”

Ohio’s standards are actually good, Bucher said; therefore, the state “would likely not be too damaged by this rule change.” But, he added, lawmakers could decide during any session to be less protective of the environment, which would be really bad news if federal regulations are also weak.

Relaxing regulatory standards on smaller bodies of water could mean more pollution flowing into bodies of water such as Lake Erie that feed our taps. That would mean that water departments would have to pay more money to make the water potable, and those higher treatment costs would mean higher water bills.

And, lest we forget, the drinking water right now isn’t as good as it ought to be in many places.

“With many of our cities and towns living with unsafe drinking water, now is not the time to cut back on clean water enforcement,” the Healing Our Waters-Great Lakes Coalition said in a statement. “We need more – not less – protection for clean water.”

We should all be glad that our rivers aren’t combustible anymore and that we can eat fish from our waterways without worrying about getting poisoned. But that success took action and vigilance, a vigilance we’d be foolish to let wane.

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